

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DELPHI CORPORATION, ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 10, 2009

9:35 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

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Motion to Authorize Motion for Order Under 11 U.S.C. Section 363
and Fed. R. Bankr. P. 6004 Authorizing and Approving Option
Exercise Agreement with General Motors Corporation

Supplement to GM Arrangement Fourth and Fifth Amendment Approval
Motion

Supplement to Plan Modification Approval Motion

Proposed Off-Omnibus Hearing Agenda

Objection to Motion filed by Celeste R. Gill on behalf of
Michigan Department of Environmental Quality

Response to Debtors' Motion for Order Authorizing and Approving
Option Exercise Agreement

Limited Objection of Official Committee of Unsecured Creditors
to the Debtors' Motion

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P R O C E E D I N G S

THE COURT: Okay. Delphi Corporation.

MR. BUTLER: Your Honor, Jack Butler, Kayalyn Marafioti, and Al Hogan on behalf of Delphi Corporation for this off-omnibus hearing. Your Honor, there are three matters on today's agenda. The first is the steering option exercise motion, at docket number 16410. That is the transaction, Your Honor, that is superseded by the master disposition agreement. We propose to carry it on the docket until there's an ultimate disposition of the other matter before the Court, and therefore, at this hearing, at least, we're just asking to move it to the June 16th omnibus calendar.

THE COURT: Okay.

MR. BUTLER: Your Honor, the second matter on the agenda is the supplement to the GM arrangement fourth and fifth amendment approval motion at docket number 16647. There are no objections filed to this motion. As Your Honor's aware, the hearing on the debtors' March 4, 2009 motion to approve amendments number four and five for the debtors' existing liquidity support arrangement with GM was adjourned. From time to time that transaction, taken together, those two amendments would have provided an additional 150 million dollars of liquidity under the GM arrangement.

As Your Honor will recall, on March 23rd of this year, counsel for the U.S. Treasury Department Auto Task Force

1 notified GM and Delphi in writing that the Auto Task Force
2 objected to the party seeking approval of amendments number
3 four and five as those amendments had been brought to the
4 Court. We've been negotiating since that time on approach for
5 additional liquidity for these cases, Your Honor, and the
6 supplement to that motion which provides for an amended and
7 restated agreement, provides for a 250 million dollar
8 incremental subordinated financing arrangement between Delphi
9 and GM pursuant to the amended GM arrangement. This is
10 intended to bridge the financing requirements of the debtors
11 through the time the Court can consider, at a final hearing,
12 the debtors' proposed plan modifications or, alternatively, a
13 private sale under Section 363 to General Motors and Platinum.

14 This financing, if approved by Your Honor, will be
15 the first time in many months that the debtors have been able
16 to announce publicly that they have a sufficient liquidity and
17 a liquidity runway to be able to bridge to a proposed emergence
18 in these cases.

19 Your Honor, in terms of the exhibit index four, this
20 motion, there are eleven exhibits. The first is the
21 declaration of Keith Stipp. The second, there are four
22 exhibits -- three exhibits, rather, dealing with the supplement
23 to the GM arrangement to the fourth and fifth amendment.
24 They're presentation materials that are exhibit five through
25 eight. Exhibits nine and ten are reserved, and exhibit eleven

1 is the proposed order. Your Honor, I would move admission of
2 these exhibits?

3 THE COURT: Does anyone have any objection to their
4 admission?

5 MR. ABRAMS: Your Honor, just a point of order. Marc
6 Abrams on behalf of certain of the DIP lenders. This
7 declaration was served up around 5:30 this morning, I believe,
8 and it is, to put it mildly, somewhat gratuitous since this
9 motion was uncontested. So there are a couple of concerns I
10 want to articulate to the Court. One would be that since we
11 haven't had time to vet it and to study it, although a casual
12 review suggests that we would dispute many of the assertions,
13 we would like it to be clear that we are not prejudiced today,
14 with respect to those assertions, for not contesting them at
15 this point in time given that the motion before the Court is
16 uncontested and, given the lack of time to thoroughly prepare
17 and analyze a response to Mr. Stipp's declaration.

18 The second point, I think, is a little trickier, and
19 that is there is a contested motion before the Court with
20 respect to plan modifications. And what I would not want to
21 happen here, given what I just said, is for the record of this
22 motion to seep into that and to supply, through this
23 declaration which was submitted for a specific purpose, a
24 supposed evidentiary record where, again, no one has had an
25 opportunity to react, no one has really had an opportunity to

1 take discovery with respect to the gratuitous submission, and
2 where prejudice could befall parties of interest at a later
3 date if they did not, at this point, make clear to the Court
4 their concerns that they not be bound by these factual
5 statements in this context.

6 THE COURT: Okay, I haven't read this declaration. I
7 did manage to read the debtors' response, which I got this
8 morning. So what is it being offered? What is the --

9 MR. BUTLER: Your Honor, it's being offered only in
10 connection with the financing motion. We are -- the difference
11 between the two hearings, the plan modification hearing is not
12 an evidentiary hearing, from the debtors' perspective. We
13 don't intend to present this exhibit or any -- this declaration
14 or any other declaratory evidence in connection with that
15 hearing.

16 THE COURT: Okay.

17 MR. BUTLER: With respect to the plan -- with respect
18 to the financing hearing there is, we believe, the requirement
19 to create an evidentiary basis for the relief that we're
20 seeking here. We've done this traditionally in these cases
21 when we've sought large amounts of money to be approved from
22 the DIP. This is not different than our prior examples.

23 THE COURT: So this declaration doesn't describe any
24 changes to the agreement or supplement any understandings in
25 connection with the DIP agreement?

1 MR. BUTLER: No, this describes the change -- this
2 does describe the change -- this exhibit, this declaration is
3 about this motion and describes --

4 THE COURT: No, no, I wasn't clear. Does the
5 declaration describe any changes to the motion as it was filed,
6 since it was filed?

7 MR. BUTLER: I don't think so, Your Honor.

8 THE COURT: Okay.

9 MR. BUTLER: I mean, what it does is describe
10 debtors' business judgment --

11 THE COURT: Why the debtors are entering into it --

12 MR. BUTLER: -- why aren't the --

13 THE COURT: -- which is essentially what's set forth
14 in the motion itself.

15 MR. BUTLER: Essentially, that is correct, Your
16 Honor. Provides some additional evidentiary basis for the
17 liquidity, it points out that it provides data entry support
18 for many of the statements made in the motion which were
19 statements that were pled. This is the evidentiary record to
20 support those statements, including, for example, that the
21 company needs liquidity today to be able to move forward with
22 the financing requirements over the balance of the -- over the
23 balance of this week and moving forward. So it provides all of
24 the -- it provides information regarding -- includes, attached
25 to it, Your Honor, is the debtors' -- this is why it's highly

1 confidential -- the debtors' cash flows which are the basis for
2 the financing. It provides information with respect to the GM
3 arrangement and the accommodation agreement, and Your Honor, we
4 would argue is entirely appropriate and consistent with the
5 motion that is before the Court now.

6 THE COURT: Let me just take a look at is.

7 MR. BUTLER: Sure.

8 (Pause)

9 THE COURT: Okay, I've taken a look at it. Based on
10 Mr. Butler's representation that this is, as it's clear from
11 the document itself, offered only in connection with this
12 motion which is unopposed, I don't believe that its admission
13 into evidence somehow estops any party who's objecting to other
14 relief that the debtors are seeking. So on that basis, I'll
15 admit it.

16 (Declaration of Keith Stipp was hereby admitted into evidence
17 as Debtor's Exhibit 1, as of this date.)

18 (Documents relating to the Supplement to the GM Arrangement to
19 the Fourth and Fifth Amendment was hereby admitted into
20 evidence as Debtor's Exhibit 2, 3, 4, as of this date.)

21 (Presentation Materials was hereby admitted into evidence as
22 Debtor's Exhibit 5, 6, 7, 8, as of this date.)

23 (Proposed Order was hereby admitted into evidence as Debtor's
24 Exhibit 11, as of this date.)

25 MR. BUTLER: Thank you, Your Honor.

1 MR. ABRAMS: Your Honor, Your Honor.

2 MR. BUTLER: Your Honor, we don't have any other --
3 unless the Court has questions, this is an interim hearing
4 because it was filed on less than fifteen days' notice.
5 There'll be a final hearing on next week at the omnibus
6 hearing. We have presented to the Court a blacklined interim
7 order, and would ask Your Honor to enter the order subject to
8 any questions the Court might have.

9 THE COURT: Well, before -- I do have a question, but
10 let me hear from anyone else who wants to speak on this motion.

11 MR. BERNSTEIN: All right, Your Honor, Don Bernstein
12 from Davis Polk for the administrative agent under the DIP
13 credit agreement. We have another procedural issue. As you'll
14 see from the Stipp affidavit, there are a number of conditions
15 in this financing, and many of them are very much tied to the
16 disposition of the objections on the plan modification motion.
17 We would suggest, Your Honor, that it may make sense to hear
18 those objections before ruling on this motion, because if some
19 of those conditions aren't satisfied after you've ruled, this
20 motion may have to be revisited, and we may have to hear from
21 the debtor as to how to address that.

22 THE COURT: Well, that really went to my question,
23 also. Most of the conditions to termination of the commitment
24 are in the future. But one of them, as I read it, is it
25 terminates seven days after the Court enters an order

1 enjoining, restraining, or otherwise restricting the debtors
2 from seeking approval of the modified plan or the stand-alone
3 sale. And the first potential for my doing that is in
4 connection with the second motion that's scheduled for today
5 which is opposed by a number of parties. Most of those parties
6 do not completely oppose the relief that is sought but seek
7 modifications of it. So I have a couple of question. One is,
8 if I approve this now, subject to the order being entered, of
9 course, but if I approve it now, and then I grant some or all
10 of the objections, other than giving GM the right to terminate,
11 what harm is there to the debtor as far as my having approved
12 something that then will terminate seven days from now. Are
13 there fees that would be paid in the interim?

14 MR. BUTLER: No, Your Honor, unlike the DIP
15 agreements with the DIP lenders, there are no fees payable to
16 GM in connect with this arrangement.

17 THE COURT: And would there be money advanced in the
18 interim?

19 MR. BUTLER: We would hope, Your Honor. That's one
20 of the things that GM will have to make a decision about
21 depending upon Your Honor's decisions today and the facts of
22 the case. The reality is, as Mr. Stipp's affidavit discloses,
23 and as the parties are aware that have received highly
24 confidential information, the company needs access to this
25 facility this week to continue to operate in the ordinary

1 course of business.

2 THE COURT: Right.

3 MR. BUTLER: And I think, while I respect
4 Mr. Bernstein's position, if you were rising not as an objector
5 but as a proponent of the DIP lenders, if the DIP lenders were
6 actually providing this financing, I think what he would have
7 said, what he's said in prior instances is the agent there --
8 here it would be GM -- would have to make a decision about what
9 it's prepared to do in light of any other decisions that the
10 Court makes. This motion doesn't predispose or predetermine
11 the plan modification motion. What it does describe is the
12 terms and conditions under which a party is prepared to put 250
13 million dollars of incremental financing into this case, the
14 only source of financing that's been offered to the debtors
15 from anybody --

16 THE COURT: Right.

17 MR. BUTLER: -- in terms of incremental financing.

18 THE COURT: And as far as the treatment of that
19 financing, if there were to be a default, first since it is
20 unopposed, I took it to mean that the DIP lenders have
21 consented to the financing in terms of any modification that
22 might result in terms of the DIP order or any of the provisions
23 of the DIP order.

24 MR. BUTLER: Your Honor, certainly, this, as the
25 motion makes clear in what I think is fairly in these

1 circumstances, the debtors have been able to procure 250
2 million dollars worth of incremental financing that is
3 subordinated to the DIP. And therefore, it is junior in
4 recover to the DIP.

5 THE COURT: Okay, so then my other question is, as I
6 read this description, it struck me as somewhat ambiguous, of
7 the termination of that enjoining, restraining, or otherwise
8 restricting the debtors from seeking approval of the modified
9 plan or a stand-alone sale. There are certain aspects of the
10 objections that really don't go to what would one describe as
11 enjoining or restraining but do put some added disclosure
12 requirements onto what the debtors are seeking in connection
13 with the procedures order on the modified plan. And it strikes
14 me, and I could ask for clarification on that point now or wait
15 and see what happens as far as the hearing that's coming up in
16 a few minutes, and then ask the debtor and GM if the changes,
17 if any -- because this is all hypothetical -- that I suggest
18 should be made to the modification procedures order would trip
19 up this condition. I hate to approve something and then to
20 leave open whether it would immediately be terminatable. On
21 the other hand, I hate to put the debtors and GM to a series of
22 hypothetical questions when I haven't reached that view. So
23 let me tell you, my inclination is to suggest that in light of
24 the terms of this DIP, including its subordination provision,
25 including the absence of a fee requirement, that it seems

1 appropriate to approve it. On the other hand, because of the
2 termination issue and how it ties in to the motion that's also
3 on for today, I would want to clarify that issue, I think, and
4 I think the debtors would, too. And it may make sense to do
5 that in light of the actual result of the hearing on the
6 modification motion.

7 MR. BUTLER: Your Honor, I think -- just two
8 observations -- first, we would expect General Motors to
9 continue to act reasonably, as they have since they entered the
10 GM arrangement last -- in the middle of 2008, in terms of how
11 they would administer this. I think Mr. Tanenbaum is here on
12 their behalf and can speak on their behalf. But the reality
13 here is what we've been able to successfully negotiate with
14 General Motors is a clear, unambiguous financial liquidity
15 runway to bridge us through to Your Honor's determination of
16 either the modified plan or an alternative sale. And all this
17 condition says is if at some point between now and then, Your
18 Honor changes direction at the request of some party and that
19 runway no longer heads to that destination but instead heads to
20 some other destination, General Motors' view is somebody else
21 should come up with the money to fund the case. They're not
22 going to provide the bridge liquidity, and that's all that
23 provision says.

24 I'd also point out, Your Honor, at the very last
25 hearing I was at, and it's -- and I'll say at the outset, from

1 the company's perspective, this is a difficult hearing for us
2 to prosecute because we understand that many of our
3 stakeholders are unhappy, and they're the stakeholders to whom
4 we owe fiduciary duties, and we have worked tirelessly to
5 maximize value for them. And so it's not a happy day when you
6 have people who are unhappy. On the other hand, we also have a
7 duty to bring these cases to the best conclusion that we can
8 and to maximize value in connection with that, and I would
9 point out that at the very last hearing that was before Your
10 Honor, the DIP lenders required us to seek approval of an
11 amendment to the modification agreement, or rather, the
12 accommodation agreement that I was required to tell Your Honor
13 was going to go into default that night at midnight. And yet
14 we proceeded to get approval of it because -- and Your Honor
15 noted on the record at the time -- because the Court had a
16 record of the DIP lenders acting reasonably in their
17 administration of these defaults. I mean, and so --

18 THE COURT: Well, there was a record, also, that the
19 agent believed he would get the approval.

20 MR. BUTLER: Right. No, no, no, that defaulted --
21 no, on that hearing, there was no promises of what would happen
22 next. I'm just pointing out to you that when it suited the DIP
23 lenders, we got approval of agreements that actually, as a
24 factual matter, would default that same day. And they have
25 acted reasonably, and I would say to Your Honor -- and we have

1 said in our papers and I would say on this record -- I believe
2 our DIP lenders, our agent, in particular, has acted with great
3 restraint and great care and with great reason in working with
4 the debtors in these remarkable moments. I have not, in my
5 experience, ever dealt with a situation where the capital
6 markets and the economy in which we live would have a DIP of
7 this magnitude end up maturing and not being repaid in
8 accordance with its terms and entering into an accommodation
9 agreement, all the things we've done. So let me be clear on
10 this record, the debtors are not in any respect critical of our
11 agent, or for that matter, our required lenders who have, time
12 and again, tried to work with the debtors for what they have
13 believed to be their economic interest.

14 THE COURT: Well, I -- let me cut this short -- I
15 don't believe that this particular issue we're talking about is
16 that big a deal. Again, my inclination is to preliminarily
17 approve this, but on this one point, I may want some
18 clarification which will come in light of the upcoming hearing.
19 The condition for the DIP is that it be approved sometime
20 today.

21 MR. BUTLER: Right.

22 THE COURT: So I don't want to indicate that it's
23 anything more than that. I think everything else I've read and
24 you've confirmed to me about this motion argues for approval of
25 the transaction, but I think it makes sense to clarify this one

1 point if we can --

2 MR. TANENBAUM: Your Honor, can I --

3 THE COURT: -- rather than posing you and GM a lot of
4 hypothetical questions before I know whether it makes sense to
5 even ask any of the questions.

6 MR. TANENBAUM: I just want to make sure that this --

7 THE COURT: Can you -- can you pick him up on -- you
8 may have to -- someone may have to give him a seat to -- and
9 they can trade.

10 MR. BUTLER: It's going to cost him, Your Honor.

11 THE COURT: If they could trade with Mr. Tanenbaum,
12 perhaps.

13 MR. TANENBAUM: That's okay, Your Honor.

14 THE COURT: Okay.

15 MR. TANENBAUM: I'll stay back where I -- Your Honor,
16 I just wanted to make sure that there's one --

17 THE COURT: Just for the record, could you identify
18 yourself?

19 MR. TANENBAUM: Jeff Tanenbaum, Weil Gotshal for
20 General Motors.

21 THE COURT: Okay.

22 MR. TANENBAUM: Your Honor, I'm not quite sure what
23 sections or provisions the dialogue is referring to, but I do
24 want to just refer to 401JII which states that on or before
25 June 10, 2009, the bankruptcy court shall have entered an

1 order --

2 THE COURT: Right.

3 MR. TANENBAUM: -- in form and substance reasonably
4 acceptable to GM granting the relief requested --

5 THE COURT: Right.

6 MR. TANENBAUM: -- by the solicitation motion.

7 THE COURT: So it doesn't have to be -- right.

8 MR. TANENBAUM: It can be whenever it is, and I
9 gather we will scrutinize that order and will --

10 THE COURT: Right.

11 MR. TANENBAUM: -- be reasonable, as Mr. Butler
12 suggests we always are.

13 THE COURT: And similarly, the order approving the
14 DIP doesn't have to be entered at 10 a.m. on June 10; it can be
15 entered at 1 p.m.

16 MR. TANENBAUM: That's true, Your Honor.

17 THE COURT: All right, so I'm going to give you my
18 preliminary ruling on this, which is that I'm going to approve
19 this motion for the reasons that I'm about to state on the
20 record, which is the debtors have prudently determined that
21 they need additional DIP financing to carry them at least
22 through the period contemplated by this agreement -- or two
23 agreements with GM, and that the terms of that financing are
24 such that I don't find them to be improvident or such that the
25 debtors are not using their proper business judgment when

1 entering into them. And I say that in full appreciation of the
2 particular context that we're in in this case. I don't find
3 the terms of this agreement, particularly given its
4 subordination and the absence of fees, unduly or even
5 particularly coercive in connection with the other related
6 transactions that are referred to in the agreement. I think
7 they give the debtor sufficient flexibility. However, my
8 ruling is preliminary because I think there may be a need to
9 clarify at least one of the potential termination rights, and I
10 recognize, as you have, that GM, based on what I have seen, has
11 been acting in good faith and reasonably. And rather than
12 raise a series of hypothetical questions to clarify that point
13 now, it seems to me that if there's the need for any
14 clarification, it should be made in light of real questions
15 that may get asked later today.

16 MR. BUTLER: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. BUTLER: Your Honor, before we move to the
19 contested calendar, we've got a couple of minutes of just
20 questions that I think will make, for counsel, I think will --

21 THE COURT: Before we do that -- I'm sorry, just we
22 may not come back to this -- as far as the interim order is
23 concerned, are there any changes that are being proposed to it
24 from the draft that I've received?

25 MR. BUTLER: We submitted a blackline, I believe, to

1 chambers with respect to the interim order. No changes from
2 when we originally filed, right? No.

3 MR. ABRAMS: I'm not sure everyone's seen that order,
4 Your Honor.

5 THE COURT: Well, the black --

6 MR. BUTLER: Mr. Abrams, you're not in contest of the
7 motion.

8 THE COURT: No, but this --

9 MR. ABRAMS: Okay, so I just accept the order.

10 THE COURT: -- I didn't see a blackline on this
11 particular interim order. Is there one?

12 MR. BUTLER: No, I think it was blacklined against
13 the prior order. I don't think there's been any changes to
14 what was submitted to chambers --

15 THE COURT: Okay.

16 MR. BUTLER: -- what was attached to the motion.

17 THE COURT: All right. So the order that was
18 attached to the motion --

19 MR. SIEGEL: Your Honor, could I just clarification
20 on that? Glenn Siegel on behalf of Manchester entities. I'm
21 now confused. Is Mr. Butler saying that there was a blackline
22 submitted with the initial motion, which is the only blackline
23 this Court has seen, and that's blacklined against the last
24 order? Or has there been a subsequent blackline filed?

25 THE COURT: I've only seen the order that was filed

1 with the motion.

2 MR. BUTLER: Correct, and that's --

3 THE COURT: Okay.

4 MR. BUTLER: That's correct, Your Honor.

5 THE COURT: All right, so the order with the motion
6 would be the one I would enter.

7 MR. SIEGEL: Okay, so that's the one we actually
8 reviewed, so we're fine.

9 THE COURT: Right, right, and I'm comfortable with
10 that order, as well. Okay, all right, so --

11 MR. BUTLER: Your Honor, if I could just have a very
12 brief recess before we start the contested hearing, probably
13 five to ten minutes.

14 THE COURT: Okay, that's fine. Is it five -- I could
15 just stay here.

16 MR. BUTLER: I really think it will be five to ten
17 minutes. There's a couple questions I've got to find out to
18 make sure that we move this forward efficiently.

19 THE COURT: Okay.

20 MR. BUTLER: I have a feeling if I make a couple
21 statements right now, there may be some objections, and I'd
22 like to resolve this.

23 THE COURT: All right, that's fine. So I'll come
24 back in ten minutes.

25 MR. BUTLER: Thank you, Your Honor.

1 (Recess from 10:04 a.m. to 10:12 a.m.)

2 THE COURT: Okay, we're back on the record in in re:
3 Delphi.

4 MR. BUTLER: Your Honor, thank you for that brief
5 adjournment. We are ready to proceed now on matter number
6 three on the agenda. This is the supplement to the plan
7 modification approval motion, filed at docket number 16646.
8 The hearing on this matter is being conducted pursuant to an
9 amended order that Your Honor entered scheduling a hearing
10 today. That order's found at docket number 16652. By this
11 motion supplement, the debtors seek an order approving certain
12 modifications to the confirmed first amended joint plan of
13 reorganization of Delphi Corporation and certain affiliates, as
14 debtors and debtors-in-possession, as amended on January 25,
15 2008 to the confirmed plan. The related disclosure statement
16 at docket number 11388, which is the December 10, 2007
17 disclosure statement, and voting procedures as set forth in the
18 December 10, 2007 solicitation procedures order found at docket
19 number 11389. We're asking Your Honor today to set a final
20 hearing date on approval of the debtors' proposed plan
21 modifications under Section 1127 of the Bankruptcy Code for
22 July 23, 2009. In connection with these cases, we're asking
23 Your Honor to set an administrative expense claims bar date for
24 postpetition claims arising before June 1, 2009, as well as an
25 alternative sale hearing date of July 23, 2009 to be used only

1 if necessary to consider the sale of substantially all the
2 debtors' assets pursuant to a private sale under Section 363 of
3 the Bankruptcy Code if the Court does not approve the debtors'
4 proposed plan modifications on that date. Your Honor, that's
5 the sum of the relief that we're seeking today. This is, from
6 the debtors' perspective, largely a procedural hearing. We are
7 not proceeding -- or at least, the debtors are not intending to
8 proceed with an evidentiary hearing. We have no evidence or
9 exhibits for the record today, but instead rely on the
10 pleadings that have been documented.

11 Your Honor, very briefly, because we have filed a
12 reply to the objections that have been filed -- as Your Honor's
13 aware, several hundred objections have been filed to this case,
14 the majority of them, probably ninety percent of the objections
15 or more, are filed by participants in the debtors' salaried
16 defined benefit program which is, under the terms of the
17 modified plan, going to be terminated in connection with an
18 agreement to be reached with the PBGC on or before the exhibit
19 filing date in these cases. And there is, understandably,
20 concern expressed by the pensioners in that transaction. The
21 balance of the objections are filed by a number of our key
22 stakeholders in this case, including our DIP lenders and our
23 official unsecured creditors' committee.

24 Your Honor, in terms of conducting this hearing, I'm
25 not going to make an extended argument in favor of these

1 documents that we have filed with the Court. We have done so
2 in our papers and our reply. The debtors believe that, for the
3 first time in fourteen months since the plan investors walked
4 away from this company on April 4th of 2008, that we're before
5 this Court with a fully-funded feasible set of emergence
6 transactions that will allow this company to emerge from
7 Chapter 11 that have a few, if any, material contingencies to
8 their execution and that will provide a resolution of these
9 Chapter 11 cases. These transactions largely address the
10 objectives that Delphi had set out for itself over the last,
11 certainly, six months, objectives that we have shared with our
12 principal stakeholders and discussed with them in detail. That
13 doesn't mean by any stretch of the imagination that the debtors
14 have achieved everything they would have preferred to achieve.
15 It is no small, in some respect, failure on our part that we
16 find ourselves in a position, now, of having to no longer be in
17 a position to support the salaried pension program when we had
18 a plan that was capable of being closed in April of 2008 and
19 that was fully funded and would have preserved that plan, among
20 other matters. But we are where we are, and the debtors'
21 fiduciary obligations are to look forward and not backward, and
22 to bring the transaction to the table that we believe, based on
23 our information, is one that is funded, feasible, capable of
24 execution, and based on the debtors' analysis, maximizes value.

25 Today is not a day to sort out valuation. The merits

1 of this transaction are for another day, specifically for July
2 23rd, if Your Honor approves that date. But the fact that we
3 have been able to bring such a transaction to the Court, the
4 fact that we have been able to obtain sufficient financing in
5 the motion Your Honor already provisionally approved to fund
6 the debtors' cases and provide the liquidity runway to that
7 date is extremely important to the company. And the fact that
8 we have been able to provide a liquidity runway, that will give
9 the Court and the company the opportunity to consider any
10 unsolicited feasible transactions that are submitted between
11 now and then in accordance with the debtors' fiduciary duties
12 is important as well. The parties in this case have -- that
13 are parties to this agreement have adopted a private sales
14 transaction because of the very unique nature of the
15 transaction. My person as well as professional belief is that
16 there's no transaction that's probably more ideally suited to
17 the requirements of a private sale than this, in which there
18 has been a determination made by the parties making emergence
19 capital as to what the relationships between them should be
20 and, clearly, the support of our largest customer, General
21 Motors, both in terms of providing substantial liquidity, but
22 also in further modifying its commercial relationships with the
23 company and its satisfaction with its partner in moving forward
24 is critical of the successful negotiation of that transaction.
25 It is -- in our reply, we made it clear that we have the

1 appropriate fiduciary outs in the NDA, that all the provisions
2 are subject to that fiduciary out, there is a nonsolicit
3 agreement in the NDA that would prevent us from soliciting
4 competing transactions, but certainly not from considering
5 them.

6 So Your Honor, unless Your Honor has specific
7 questions of the company at the front end of this hearing, I
8 think we're prepared to rely on the papers we've filed,
9 including our reply. We have provided in the reply a summary
10 of the objections and our responses to each of those. We have
11 provided blacklined copies of changed pages to the material
12 documents and we're prepared to address any of the objections
13 or any of the questions the Court may have in connection with
14 this hearing.

15 THE COURT: Okay. I don't have questions now. I
16 think that it is important to focus on what it is, actually,
17 that the debtors are seeking approval of today as opposed to at
18 the end of July in connection with this hearing. I understand,
19 from reading the objections, that as of today, important
20 constituents in this case have stated that they won't approve
21 the transactions that are contemplated. But I generally agree
22 with the debtors' view that that is an issue, ultimately, for
23 another day. On the other hand, I think that the context is
24 one that requires an acknowledgement that those statements have
25 been made. But I don't think that we're well-served by going

1 through all of the reasons why people don't approve the
2 underlying deal. What I view is that is before me today is,
3 perhaps, most importantly, two things, and then some subsidiary
4 issues. First, I want to make sure I understand whether the
5 debtors, today, are asking me for approval of any portion of
6 the, what I'll refer to as the sale agreement that would,
7 therefore, bind the debtors prior to the general approval
8 hearing, and in particular, I'm focusing on the restrictions in
9 9.40. Secondly, I think what is before me, clearly, and again,
10 I do have that question as to whether that issue is before me,
11 but I think what is clearly before me is whether the supplement
12 to the disclosure statement, in fact, contains adequate
13 information for those who need to rely on it. And then it
14 seems to me, thirdly, that in connection with the procedural
15 relief that the debtors are seeking, in addition to the issues
16 about the proper record date and the proper treatment of empty
17 classes or empty voted classes and some of the other issues
18 that have been raised, there is a fundamental procedural issue
19 that's tied into my first question, which is, even assuming
20 that the debtors aren't seeking actual approval of, in large
21 measure, a private sale process, is the case such that unless I
22 impose some additional requirements for that process, there's
23 going to be a de facto private sale process. And therefore, I
24 need to focus now on whether there needs to be additional
25 protections to ensure that within the time constraints imposed

1 by the debtors' liquidity, there's reasonable assurance that
2 the highest and best value for these assets is obtained. So
3 that's what I really want to focus on. So maybe I should ask
4 you that one question, even though I said I didn't have any
5 questions for now, which is are you seeking, today, approval
6 of, in particular, Section -- I believe it's 9.40 so that the
7 debtors would actually be bound by that provision, or are we
8 really talking about the latter issue, which is should I impose
9 some specific additional requirements, as the DIP lenders have
10 requested, to make this less of a private sale process?

11 MR. BUTLER: Your Honor, I'll state my view, and I'm
12 sure Mr. Tanenbaum on behalf of General Motors, Mr. Harris on
13 behalf of Platinum can correct me if they disagree. I do not
14 view Your Honor as approving the master disposition agreement
15 today. I do believe, however, that the company is obliged to
16 and would follow the terms and conditions of the master
17 disposition agreement going forward in this interim period
18 because the failure to do so would cause there to be
19 unsatisfied condition at closing such that what is now not a
20 conditional sale would, in fact, become a conditional sale or
21 an option with respect to Platinum and General Motors. And we
22 have all seen the havoc in this case that potential acquirers
23 have raised when they have asserted option agreements in this
24 deal.

25 THE COURT: Okay.

1 MR. BUTLER: And so I --

2 THE COURT: So it's really a -- the debtors would be
3 clearly pursuing a course of action consistent with this
4 provision because they would want to preserve their rights
5 under the agreement.

6 MR. BUTLER: Correct.

7 THE COURT: Okay. All right.

8 MR. BUTLER: And so we would -- that's how would be
9 addressing that. I assume Mr. Tanenbaum, Mr. Harris, that they
10 would not disagree with that, because if I have it wrong, they
11 should come.

12 MR. HARRIS: Adam Harris from Schulte Roth on behalf
13 of Platinum Equity. No, Mr. Butler's statement is correct,
14 Your Honor. This provision that was heavily negotiated does
15 contain weekly but customary fiduciary out, supporting debtors,
16 entertaining offers that are presented to the company, and in
17 that light, we would expect the company to abide by that going
18 forward through closing.

19 THE COURT: Okay, and if they don't, you might assert
20 a termination right?

21 MR. HARRIS: We have that right, Your Honor, yes.

22 THE COURT: Okay, fine. Okay, so I'll hear from the
23 objectors, and given the issues that I've mentioned, it
24 probably makes sense to hear from the DIP lenders, first. I
25 know that there are other issues that have been raised. I

1 would also note, and the debtors have already partially
2 answered my first question because I noted that you deleted the
3 paragraph in the proposed order that would have authorized the
4 assumption of certain contracts in the interim, before the deal
5 closed. So I think to the extent anyone has not seen that
6 deletion, that issue's not an issue anymore.

7 MR. ABRAMS: Good morning, again, Your Honor. Marc
8 Abrams on behalf of certain identified DIP lenders to Delphi
9 Corporation. Your Honor, I think the first point we'd like to
10 emphasize is that the objectors, including our clients, are not
11 here today to scuttle what's transpired in the last few weeks.
12 What we are here today to do, and what I think we have done, is
13 demonstrate to Your Honor that the process that is before the
14 Court is seriously flawed and has to be fixed. And only
15 through fixing that process can lenders be expected to forbear
16 and to attempt to cooperate and participate in a way that may
17 produce a consensus at the end of the day. We are not here to
18 threaten --

19 THE COURT: In light of that, I understand from your
20 objection that you're working within the same timeline with
21 some additional events as the debtors propose. You're not
22 looking to extend the timeline beyond July 23rd, for example.

23 MR. ABRAMS: We are not, Your Honor. And I would
24 only caution to say at this point in time, but certainly based
25 on what we know today, we are not seeking to extend the

1 timeline. We appreciate that liquidity is tight. We, frankly,
2 view ourselves as having had fobbed upon us the sole
3 responsibility to finance this company, now, for several
4 months. So while we have resisted, today, commenting on
5 Mr. Butler's statements that only GM appears to have stepped up
6 to the plate, that pretty much ignores recent history.

7 THE COURT: Well, no, he said you all had been
8 engaging in good faith, too, so.

9 MR. ABRAMS: That's true, he's been fair in his
10 compliments, Your Honor, throughout the case. But I do think
11 that the central point, here, is that this process is severely
12 flawed. What we are simply asking Your Honor to do, again,
13 reserving all of our rights to the extent that at some point in
14 time they may need to be exercised, is to open this up in a
15 transparent, fair, balanced, and honest manner and allow
16 competition to be excited in the marketplace and among the DIP
17 lenders themselves, and to see if, in fact, those who recently
18 invested billions of dollars in this company on the basis that
19 a DIP loan is money good, which I think I refer to as the T
20 bill of a bankruptcy claim, is in fact worth somewhere in the
21 few nickels price range. And the fact of the matter is that
22 what is before Your Honor is anything but an open, fair, and
23 balanced process. What is before Your Honor -- and even today,
24 the company clings to the notion that this is a private sale
25 that is justified under the circumstances. The reality is that

1 there is nothing that is justified here that should induce this
2 Court to ignore the letter of the law, ignore the due process
3 rights of these lenders, and to permit to proceed what we
4 believe is nothing more than a perversion of what Chapter 11 is
5 supposed to be. And even though we recognize and do not
6 begrudge the great difficulty that our government has today in
7 attempting to salvage what was once a robust global automotive
8 industry, the rule of law and the commercial rights and
9 expectations of creditors, particularly DIP lenders, cannot
10 bend in the face of such political forces. There is a process
11 here; there is a system here and it has to be abided if people
12 are going to get their just due in these proceedings. So we
13 have made a lot of arguments in our papers. I don't intend to
14 rehash --

15 RECORDED MESSAGE: Warning, your call is being
16 recorded.

17 MR. ABRAMS: I thought all my calls were being
18 recorded.

19 MR. SPEAKER: That would be the government content.

20 MR. ABRAMS: Don't worry about this.

21 THE COURT: Of course, the whole hearing's being
22 recorded. That's why we have transcripts. But, all right.

23 MR. ABRAMS: Here's what I think is really the nub of
24 the problem as I see this thing progressing today, and as I
25 understand Your Honor's comments. We have zero confidence that

1 the company can rely upon that fiduciary out in a way that will
2 give us our just due and our entitlement. I say that for a
3 couple of reasons. One, I think there has been a palpable
4 distortion in the normal governance of all of these automotive
5 companies.

6 THE COURT: I'm sorry about that. I don't know why
7 the feedback came in.

8 MR. ABRAMS: And I don't mean that in any Dickensian
9 way or any sinister way. What I'm simply suggesting, Your
10 Honor, is that the Treasury, as we know, is basically out there
11 picking the winners and losers in a massive effort to
12 rationalize a global industry here in the States. And the
13 Treasury, ultimately, as we know from Chrysler, from the GM
14 situation, from Delphi today, is the ultimate if not exclusive
15 allocator of capital to the automotive industry. And because
16 of that, I'm simply suggesting, Your Honor, that a board of
17 directors in this environment is no longer the independent
18 disinterested fiduciary that it might once have been before we
19 introduced the influence and political prowess of the U.S.
20 Treasury to the equation. Now, when you add to that the fact
21 that at least in our view, in the most recent weeks, this board
22 has taken action and approved transactions that are, in our
23 view, abominations and which, in our view, are completely
24 without regard to our legal rights and entitlements. We had a
25 very difficult time concluding that this board and management

1 can self-police its fiduciary responsibilities in this case
2 given those pressures and given those sources of influence.
3 And what that suggests to us, Your Honor, is that any auction
4 process here has to be Court-supervised. It has to be open,
5 there has to be a directive from Your Honor that information be
6 made available subject to appropriate confidentiality and other
7 arrangements, but it cannot continue this case in a vein where
8 things are occurring behind closed doors to which we have no
9 visibility, arrangements and deals are being cut behind those
10 doors that are basically handed to us as a fait accompli --
11 something I was very concerned about merely a few weeks ago, in
12 fact, has come to pass -- and where competition is stifled and
13 where folks are being deprived of an opportunity to demonstrate
14 that they're being asked to sacrifice way too much in these
15 cases to achieve what is, broadly speaking, a common good for
16 Delphi, for the industry, and for everyone else.

17 And I might also add, Your Honor, and I say this with
18 all seriousness, the transactions that is before your court
19 contains elements which, at least to me, suggests that there is
20 a self-interest at play here, among the board. And that self-
21 interest takes the form of causing a buyer to assume not
22 ordinary course operating liabilities, but rather corporate
23 indemnities and similar type protections. When a board in the
24 maelstrom of this economic environment and in the context of
25 what they had to know would be a highly contested and largely

1 viewed sell-out transaction has caused the buyer to assume
2 those responsibilities, you have to ask yourself, are they
3 truly good and honest stewards of these estates? And I'm
4 simply saying, whether or not they are or they aren't, we're
5 not prepared to take that chance at this point, going forward.
6 And therefore, we would ask that whatever Your Honor is
7 inclined to do with respect to opening this process up,
8 shedding some light on it, that it be done under your auspices
9 and under your supervision, and that we all will take great
10 comfort, if you're prepared to go in that direction, over
11 allowing Delphi in these straited circumstances to be the sole
12 arbiter and judge of what, in fact, its fiduciary
13 responsibilities are under these circumstances.

14 Unless Your Honor has questions about our submission,
15 I thought that the sequence would be that Abrams would open,
16 then Mr. Bernstein would talk about some constructive
17 approaches that would add some flesh and bones to my comments,
18 and then perhaps Mr. Siegel would clean up for us in the third
19 spot. So if Your Honor has any questions, I'd be glad to
20 answer them.

21 THE COURT: Well, one of the points raised here is
22 that at least as far as the requirements 1127(c), which is that
23 1125 apply, that your clients really don't have anything to do
24 with the disclosure statement. Is that -- what is your
25 response to that?

1 MR. ABRAMS: Well, Your Honor, I mean --

2 THE COURT: I mean, I know there are other aspects of
3 this relief that your clients clearly have --

4 MR. ABRAMS: I think it's an academic --

5 THE COURT: -- something to do with, and I don't
6 think the debtors would dispute that. But as far as the
7 disclosure statement is concerned?

8 MR. ABRAMS: I think it's an academic matter. This
9 is a plan modification like the New Testament is a modification
10 of the Old Testament. But the reality is that we're not here
11 to forestall, to obstruct, to stop. The only question I would
12 say with respect to the disclosure statement is if, in fact, we
13 are heading down a competitive auction process, the only way
14 that third parties subject to whatever information flow Your
15 Honor's prepared to allow can truly evaluate the bogey against
16 which they're bidding, there needs to be greater insight into
17 what that deeply subordinated Platinum Equity piece really is
18 worth, compared to its face value. But that would be the --

19 THE COURT: The Tranche C interest?

20 MR. ABRAMS: By coincidence, yes, the Tranche C
21 interest.

22 THE COURT: Oh, not the Tranche C interest, the Class
23 C interest.

24 MR. ABRAMS: The Class C interest. That would be the
25 one area where I thought a little light could be shed on how

1 one should approach valuing that. But beyond that, I think
2 disclosure, in this instance, is really an issue for
3 Mr. Rosenberg and his stakeholders.

4 THE COURT: Okay, thank you.

5 MR. ABRAMS: Thank you, Your Honor.

6 MR. BERNSTEIN: Your Honor, Don Bernstein for the
7 administrative agent under the DIP credit facility. We come
8 with a slightly different perspective, perhaps, from some of
9 the lenders. We are, as you know, an administrative agent. We
10 are also technically the secured party under the DIP credit
11 agreement. And our perspective is that the best resolution
12 here is a consensual resolution, and that means several things.
13 One of the concerns we have, Your Honor, is that if this
14 process is not opened up to competitive bidding, that we will
15 receive an instruction sometime between now and the sale
16 hearing from the DIP lenders who control exercise remedies,
17 here, because they will want an auction. And if remedies are
18 exercised, the agent, in effect, would be mandated to conduct
19 an auction of the debtors' assets. And that will permit those
20 who have an interest in investing to do so. We do not think
21 that that would be a constructive event, Your Honor. In fact,
22 we think it would be very destructive. But, if the DIP lenders
23 were left no alternative, they might issue such an instruction.
24 On the other hand, I think without really disturbing
25 the relief that the debtor has requested, it's possible to make

1 it clear, either on the record here or on the order, that this
2 Court will entertain competitive bids, including credit bids,
3 at the time of the sale hearing. And the reason I believe the
4 Court should be entertaining those bids really relate to some
5 of the things that Mr. Abrams has said, which, for better or
6 for worse, constrain the ability of the debtor to really
7 function with total flexibility on competitive bidding here.
8 And I don't want to belabor that point, but I think it's
9 important that the Court retain that flexibility and be able to
10 hear, at the time of the sale hearing, competitive
11 transactions, and also, Your Honor, address any credit bids
12 that might be made, which, as Your Honor knows, under Section
13 363(k), are permitted, and moreover, under the DIP credit
14 agreement and the DIP order, it is clear to us that the DIP
15 lender's consent would be required to release the liens here.
16 So any transaction that occurs at that hearing will require the
17 DIP lender consent at that time

18 So we have filed papers, and you will see at the end
19 of our objection a list of things we think the Court can do
20 consistent with the relief requested, and we believe consistent
21 with the financing agreement to make sure that the Court
22 retains flexibility to keep the process open, to make sure
23 potential bidders get the information that they need, and to
24 make sure that all parties' rights are reserved, including both
25 the right to credit bid and the rights under the DIP credit

1 agreement to be required -- any required consents in connection
2 with any transaction. So that is really what we're requesting
3 the Court to do, and we do believe that the Court can make it
4 clear on this record and in the order that those rights are
5 preserved.

6 THE COURT: Well, let me ask you one question related
7 to what you've raised. And I can tell you that the question is
8 prompted by a prior case of mine where this issue apparently
9 was not laid out clearly enough. There's clearly, under
10 363(k), a right to credit bid, i.e., to bid one's debt. In
11 that case, which is the WestPoint Stevens case, and quite
12 likely in this case, if there is a competing bid, the bid would
13 entail not only bidding debt but some other form of
14 consideration.

15 MR. BERNSTEIN: Your Honor, I don't believe that's
16 the case, if you really parse through what's likely to happen.
17 There is a three plus billion dollar loan that can be credit
18 bid here. You would compare that to the consideration coming
19 to the stakeholders in this estate and to the DIP lenders and
20 whether the liens were being discharged. After the assets are
21 acquired, there would be a need, on the part of those who buy
22 the assets to make sure that there was adequate financing. But
23 that would not be part of the bid.

24 THE COURT: Well, my concern is to leave this issue,
25 this potential problem open. I understand the request for an

1 auction environment in the bankruptcy court. That's the
2 traditional approach to sales, not only in assets, but of
3 businesses in bankruptcy. And I understand why the agent and
4 the lenders would view the alternative, which is an auction or
5 auctions under state procedures, as not being as beneficial to
6 anybody, including the debtor but also to the secured lenders.
7 But it seems to me if one's going to have an auction, and there
8 is bidding that includes consideration other than claims, then
9 those participating in the auction who are creditors should
10 agree, as a condition to the auction, that they will accept the
11 highest and best bid, that they will not then assert their
12 rights as secured creditors afterwards, as if the auction
13 hadn't happened. You understand what I'm saying?

14 MR. BERNSTEIN: Yeah, you're saying, Your Honor, that
15 if the Court approves a transaction, you're suggesting that
16 people should no longer assert their rights as secured
17 creditors at that point.

18 THE COURT: Well, if they participate in the
19 auction --

20 MR. BERNSTEIN: Yeah. I can't speak --

21 THE COURT: Right.

22 MR. BERNSTEIN: -- to those who might participate,
23 Your Honor, and they're not even all in the room. What I will
24 say is that you really have to look at two separate points in
25 time. You have to look at a point in time at the hearing when

1 there may be two different kinds of bids. Some parties may
2 come in with bids that include other consideration; other
3 parties may come in with just a credit bid.

4 THE COURT: And I'm focusing only on the former.

5 MR. BERNSTEIN: Right.

6 THE COURT: If it's just a credit bid, I don't think
7 it's an issue.

8 MR. BERNSTEIN: Okay, well, I can't speak to whether
9 those who participate in the auction and make other types of
10 bids would be willing to relinquish their rights as creditors.
11 My honest answer to you, Your Honor, is if they -- you really
12 have to pose that question to them because I just --

13 THE COURT: Well --

14 MR. BERNSTEIN: -- and I don't even know who they're
15 going to be.

16 THE COURT: Well, I'm going to pose it to the
17 constituents who are here who are asking for an auction because
18 I don't want to have happen again what happened in WestPoint
19 Stevens. I was of the belief that, at the request of secured
20 lenders, we were having an auction and the best bid would win.
21 I believe that's what was agreed to, and nevertheless, after
22 the best bid won, the losers, secured creditors, objected on
23 the basis that their secured creditor rights were being
24 impaired. That was sustained. However, on remand, my
25 conclusion that we weren't going to have another auction and go

1 through the same thing because it was really a sham was also
2 sustained. So, it seems to be if one's really going to have an
3 auction that's both credit bidding and consideration, one
4 should accept that the purpose of that auction is to get the
5 best price and not to simply -- because otherwise, who would
6 participate in it?

7 MR. BERNSTEIN: Right. But just to clarify, Your
8 Honor, if the secured creditors made a pure credit bid --

9 THE COURT: I think that's a different story --

10 MR. BERNSTEIN: Yeah.

11 THE COURT: -- because that's not, you know, that's
12 just their right under 363(k).

13 MR. BERNSTEIN: Yeah, now, Your Honor, we have the
14 difficulty, of course, of having a syndicate with large numbers
15 of lenders where one or two or three parties might make a mixed
16 bid of the kind that you're talking about. I don't think that
17 other secured creditors or even the agent would be in a
18 position to waive the rights of the group.

19 THE COURT: I'm not suggesting that. I'm really
20 trying to get your thoughts --

21 MR. BERNSTEIN: Yeah.

22 THE COURT: -- and others' thoughts on this
23 approach --

24 MR. BERNSTEIN: Yeah.

25 THE COURT: -- which is that those who would

1 participate on the auction would be bound by the result.

2 MR. BERNSTEIN: Okay, Your Honor, I think as an
3 agent, we would probably object to that if that were the
4 procedure simply because if they lose in that context, they
5 still do have their rights, especially under the DIP order,
6 which can't be taken away from them.

7 THE COURT: Except by consent.

8 MR. BERNSTEIN: Except by consent.

9 THE COURT: And of course, you could consent as part
10 of participating in the auction.

11 MR. BERNSTEIN: I have a feeling we might receive a
12 prompt direction as to how to proceed there.

13 THE COURT: All right, okay.

14 MR. SIEGEL: Your Honor, I don't mean to interrupt,
15 Mr. Bernstein --

16 THE COURT: Could you just, for the record, identify
17 yourself?

18 MR. BERNSTEIN: No, Your Honor, I really had
19 finished, unless you have questions.

20 THE COURT: Okay, no that's fine. So maybe you
21 can --

22 MR. SIEGEL: It's my turn anyway. So why don't I get
23 up.

24 THE COURT: -- you can speak in your turn.

25 MR. SIEGEL: Thank you. Good morning, Your Honor.

1 Glenn Siegel from Dechert on behalf of the Manchester Entities.
2 I actually got up to take Mr. Bernstein off the hook on the
3 questions because I think I'm in a better position --

4 THE COURT: It's always fun to put the agent on the
5 hook, isn't it?

6 MR. SIEGEL: Yeah, I know. But we actually represent
7 a significant DIP lender, and together with Mr. Abrams'
8 clients, we think we would be the driving force behind any
9 credit bid in any event. Your Honor, what we really need is
10 some clarification about what you mean, because we, frankly,
11 are more concerned that the assets be disposed of in a process
12 that protects all of our rights. Whether that happens in
13 bankruptcy, which we think is much more of the preferred
14 process, or otherwise is a separate issue, but we would like to
15 have this done through the bankruptcy court.

16 Mr. Bernstein made a fair point when he said that our
17 perception is that what would really be happening here is a
18 pure credit bid. However, in making a pure credit bid, in
19 order to get the lenders together to make that clear credit
20 bid, we have to know what we're going to do with the asset
21 after we require the asset, which means that we need to have
22 available to us all the information we have as secured
23 creditors and make that available in order to figure out what
24 we're going to do in that process. If we have all the
25 information that we need in the process, and by the way, I do

1 not envy Mr. Butler's position, and I just read it back
2 according to my own notes to talk about the predicament that we
3 find ourselves in, what I -- and this is not a transcription;
4 this is simply my notes reading back, so if I need to be
5 corrected, I will be -- but what Mr. Butler said was the NDA's
6 not being approved today, but that the company would follow the
7 terms because they cannot bind the prospective purchaser, and
8 it becomes an option under those circumstances. Faced with
9 that perspective and in representing the interests of his
10 client, I think it will be very difficult for Mr. Butler to
11 easily give us the information we need to prepare a credit bid.
12 And under those circumstances, we are uncomfortable.

13 What we would suggest, Your Honor, is -- and
14 obviously, I can't talk about this on the fly completely; I can
15 simply tell you my impression in talking to my clients -- that
16 if my clients are certain that they can bid the full amount,
17 under 363(k), of the entirety of the DIP loan in an auction
18 process before this Court, and they have available to them the
19 information that DIP lenders are entitled to, under the
20 agreement, which they can share with the entirety of the DIP
21 lending group -- because this needs to be a collective
22 decision, and obviously this is subject to appropriate
23 nondisclosure agreements; we're not suggesting that the whole
24 world needs to know about this -- we think we might very well
25 be in a position to agree that the results of the auction bind

1 us. But that is under a circumstance where we know that we can
2 bid the entirety of our claim under 363(k). And by the way,
3 that is an issue between us and the agent. We and the agent
4 have to be satisfied that the agent has the directions the
5 agent needs in order to make that kind of a bid. Under those
6 types of circumstances -- and again, we need to be satisfied
7 about the information we receive and our ability to go
8 forward -- that may be possible.

9 But given where we are today, and given the
10 constraints under which the debtor has been operating, it's
11 very difficult for me to say that because the big information
12 for us, as Your Honor knows, has been information. And as
13 Mr. Bernstein said, this is a large group of lenders. They
14 need to know what they're doing when they do this. And subject
15 to confidentiality, they need to be able to vindicate their own
16 rights. And that's the issue here for us. And they are
17 prepared to vindicate their rights; they are prepared to
18 finance a company on a going-forward basis. As we say in our
19 papers, we are prepared to work with the government and GM to
20 work out something that's amicable. I would only note that
21 while there is not sufficient public information to say
22 anything definitively, we can observe, based on the GMAK, at
23 the very least, that there is an agreement wherein GM is taking
24 a series of the U.S. plants and purchasing them, that they are
25 including them in their own operations, and that the ultimate

1 configuration of the Platinum bid is going to be that the
2 Platinum piece of this bid is for the rest of the world. That
3 is not a structure that is antithetical to the goals of the DIP
4 lenders. There are ways in which we can go through this
5 process, and we can work with people. But if we do not have
6 access to information, and we do not have the ability to look
7 at this process in its entirety, we are going to be hamstrung.
8 And that's a very real issue for the DIP lenders.

9 And I appreciate the difficulties of this process,
10 but we are not intending to play hide-the-ball with this Court.
11 I don't know what happened in WestPoint Stevens, but what I can
12 say to you is we are prepared to exercise the credit bid right
13 and if -- by the way, if somebody bids more than the entirety
14 of the DIP loan, then they bid more than the entirety of the
15 DIP loan and then we're taken out. As far as I know, there's
16 no proposal to do that right now on the table, and protecting
17 our rights, this is what we're prepared to do, including
18 finance an acquisition of the business. Just to be clear.

19 Your Honor, obviously, in responding to your
20 question --

21 THE COURT: What you're addressing here goes beyond
22 the protective order that I entered yesterday because you're
23 actually acting for a sort of affirmative process, right?

24 MR. SIEGEL: Your Honor, I think that's correct, but
25 we are where we are and the disadvantage of doing these things

1 out of order -- because this hearing really is the one that
2 addresses the process and what we do going forward -- is that
3 we are in a difficult position articulating to you what our
4 needs are. And I think when we spoke to Your Honor and we
5 dealt with the protective order issues, we had an inability to
6 crystallize those issues for you in a way that we could make
7 clear what our goals are in this process. Hopefully, I have
8 stated them very clearly at this point. It's very hard to say
9 that we are separate bidders providing additional
10 consideration. That is not what's happening here. We are
11 credit bidders. But in the process of acting as credit
12 bidders, we need to know what we're going to do with those
13 assets.

14 THE COURT: Well, in addition to being a credit
15 bidder, you'd be bidding in for a business. There'd be
16 executory contracts to assume, you'd have to show adequate
17 assurance of future performance. There are other aspects than
18 just saying I have two billion of debt, I own this.

19 MR. SIEGEL: Well, there are executory --

20 THE COURT: What do you own if you're not assuming
21 the executory contracts, for example? I mean, there are other
22 things that would need to be included in a bid.

23 MR. SIEGEL: But I think those executory contracts,
24 whether assumed or not, are part of our collateral package.

25 THE COURT: Well, I don't know. That's something

1 you'd have to clarify.

2 MR. SIEGEL: I mean, we can go back and look through
3 the documents, but that's my belief. Now, obviously, we went a
4 little out of order in what I intended to say --

5 THE COURT: Okay, why don't you go ahead with the
6 rest, then?

7 MR. SIEGEL: -- so, yeah, let me just try and check
8 through my notes, and some of what I've said probably subsumed
9 some of the other things I was going to say. But just a few --
10 I'll try be brief with respect to the remainder of this.

11 THE COURT: Okay.

12 MR. SIEGEL: First of all, Mr. Butler got up and said
13 that many of the stakeholders had gotten up and expressed their
14 displeasure with this motion. I would point out that which is
15 obvious, which is other than GM which is the sponsor of the
16 bid, there is no stakeholder has indicated any support of this,
17 and it's understandable that GM would support since it's their
18 bid. Our concern is that whatever Your Honor orders today,
19 there will be a train leaving the station. And we would like
20 two trains leaving the station. In the event that the debtor
21 is unsuccessful in confirming the plan, which we think likely,
22 we need to have another process, namely a sales process, that
23 reaches the conclusion, and we're prepared to have that
24 conclusion reached on July 23rd. As I've expressed to Your
25 Honor just previously, our biggest concern is that there be a

1 process that's opened that enables us to credit bid, enables us
2 to get the information we need in order to credit bid, and
3 helps the debtor get out of the box it's in because of the no-
4 shop provision. I think that the debtor is in a difficult
5 position here because of this provision, and we need to find a
6 way to help the debtor have an open process while
7 simultaneously not being accused of somehow reneging on the NDA
8 and turning this into an option. And that, I think, is a
9 genuine concern.

10 To that end, what we think would be sensible is an
11 agreement that we could put together a marketing plan and
12 together bidding procedures that make sense that would be
13 approved in tandem with this order so that we actually have a
14 playing field, that that would be what would ordinarily be the
15 case. I appreciate Mr. Butler's assertion that this ought to
16 be a private sale, but we just beg to differ. And we do not
17 know why, even in the context of a private sale, a lender's
18 right to bid in under 363(k) could be eviscerated. And that's
19 a significant issue.

20 Now, I -- and by the way, just to follow up on my
21 earlier point about dealing with GM, I think one thing we need
22 to be clear of here is that the government's legitimate policy
23 objectives related to the resurrection of the U.S. auto
24 industry need not require ignoring the rights of predators
25 under the Bankruptcy Code. They are not inconsistent with each

1 other. Nor is it the intent of the DIP lenders to ignore the
2 government and the needs of the government in the process. But
3 we need to be part of the process, and this is not the GM
4 bankruptcy case. This is the Delphi bankruptcy case. There
5 are different constituencies and there are different issues
6 involved, and those need to be taken into consideration,
7 including the rights of the postpetition superpriority
8 administrative creditors that are the creditors under the DIP
9 lending agreement. And the law is fairly well developed as to
10 the rights of those creditors, and we ought not to ignore them.

11 Your Honor, I think that's all I have right now.

12 Thank you.

13 THE COURT: Okay, thank you. Mr. Rosenberg?

14 MR. ROSENBERG: Am I next, Your Honor?

15 THE COURT: I think so.

16 MR. ROSENBERG: I guess I'm in the slightly unusual
17 position of being kind of at that bottom of the food chain at
18 this point, and yet agreeing with virtually everything that the
19 three representatives of the DIP lenders said. We gave a
20 number of examples in our papers as to why the government
21 process was opaque and not transparent and certainly not run
22 for the benefit of the Delphi estate and the interest in that
23 estate. It was clearly and articulately stated to be a process
24 to preserve GM. No argument with that. That was the policy;
25 that was what was involved. But as Mr. Siegel just indicated,

1 this is the Delphi bankruptcy, not the GM bankruptcy. Those
2 issues can be addressed down the hall to Judge Gerber. We
3 have --

4 THE COURT: Well, except that the only reason GM's
5 doing this is to preserve GM. So you have to keep that in
6 mind.

7 MR. ROSENBERG: Your Honor, I do keep that in mind.
8 But when the results of that is outrageously large returns
9 which I can't talk about the record which was set forth in my
10 papers, and I'm not clear why I can't talk about it on the
11 record, but we won't have that argument today --

12 MR. SIEGEL: I think you just did, Mr. Rosenberg.

13 MR. ROSENBERG: -- for the benefit of a private
14 equity firm selected through some totally untransparent process
15 by the government and the benefit of GM with no numbers
16 available to anyone else to see whether or not the returns are
17 so outsized that they should be going, at least in part, to the
18 constituents of this estate, Your Honor, it's just not enough
19 to say GM's doing it, so everyone's got to go along.

20 THE COURT: But in part, you're saying that because
21 it's not just GM. There's another party involved --

22 MR. ROSENBERG: Absolutely.

23 THE COURT: -- which is something called Platinum.

24 MR. ROSENBERG: Absolutely, I'm saying that, Your
25 Honor, and that goes to the point that the DIP lenders have

1 been making except takes it a little bit further. The DIP
2 lenders rightfully are complaining about the absence of an open
3 process here, pursuant to which they can exercise their rights
4 to put together a deal that presumably would benefit them. I
5 take it a step further and say that there has been no process
6 pursuant to which any interested third party can come in and
7 potentially make a better offer, a more appealing offer. And
8 again, we have clear evidence of at least one situation where
9 the party asked for three weeks of due diligence and was simply
10 turned away. And that was two weeks ago. They could have been
11 one week from completion of their due diligence. So, Your
12 Honor, what you have here is a complete opaque process where
13 parties were chosen, for reasons that are not clear, to
14 potentially create outsized returns that should be going to the
15 unsecured creditors of this estate for reasons that are not
16 clear and which have not been analyzed or disclosed, and they
17 finish it by saying if you don't agree to a plan that gives you
18 nothing, we'll do a private sale on the same undisclosed terms
19 and undisclosed analysis to give you nothing. And Your Honor,
20 I suggest to you that this is a deeply flawed process.

21 So on the issue of the sale -- and I'll address the
22 modifications to the disclosure statement separately, now or
23 later, or whenever you want me to -- I am fully on board with
24 what the DIP lenders have said except they haven't gone quite
25 far enough. What Your Honor needs to impose here and supervise

1 within the time constraints -- but that's why the supervision
2 is necessary -- is a fully open process pursuant to which
3 legitimate bidders -- and that, too, is subject to
4 supervision -- can come forward and participate in this
5 process. That has not happened; it needs to happen. This is
6 an estate.

7 Shall I proceed on to the --

8 THE COURT: Yes.

9 MR. ROSENBERG: -- disclosure statement? Or you want
10 to do that separately?

11 THE COURT: No, you can go ahead to that disclosure
12 statement and the voting issues.

13 MR. ROSENBERG: Okay, I think we're raising really
14 two legal issues, Your Honor, plus a volume of disclosure
15 issue. And you summarized them earlier, but they really are a
16 record voting date and whether the class has to be resolicited.
17 Secondly, the issue of what is an impaired class, including a
18 class where nobody votes, and the third issue is the disclosure
19 that we feel is necessary to describe what is involved in this
20 proposed plan in terms of money in, money out. So taking those
21 one at a time.

22 1127(d) says what it says, but I loved Mr. Abrams'
23 comments about the Old Testament and New Testament and couldn't
24 possibly improve upon that.

25 THE COURT: Well, I guess the other issue with

1 1127(d) is who's the holder --

2 MR. ROSENBERG: Precisely.

3 THE COURT: -- that's referred to in it.

4 MR. ROSENBERG: Who is the holder? Certainly not
5 somebody who held eighteen months ago on a record date then.
6 Your Honor, this screams --

7 THE COURT: And doesn't hold now.

8 MR. ROSENBERG: Certainly -- if holds now, no
9 problem. But we know that there's been a huge amount of
10 trading in the interim, and they're asking people to be
11 involved when they've been gone for eighteen months, and
12 everyone who's been involved over the last eighteen months to
13 be disenfranchised. Assuming there were any reasonable way for
14 the sellers to track down the buyers and vice versa, Your
15 Honor, it's just not practical, it's just not fair, and it is
16 not required by the statutes. The situation screams for a new
17 record date. This is not a situation where a hundred percent
18 plan became a ninety-five percent plan so you might shrug and
19 say well, those old holders can be bound, they won't bother to
20 change their votes. Obviously, this is a completely new
21 situation. To call it the same plan is ludicrous. This is the
22 plan that provides the unsecured creditors with nothing.
23 Nothing under any reasonable projection. To say --

24 THE COURT: Well, I'm more trouble by the notion --
25 of the lapse of time and the trading because at that point, you

1 don't really know who the holders are.

2 MR. ROSENBERG: You certainly don't, Your Honor.
3 You'll be sending the notice that you have to change your vote
4 to people who had been gone for eighteen months. It makes no
5 equitable sense. So I don't know that I have to belabor it
6 more than that.

7 The debtor has also, on the probably very good
8 assumption that the unsecured creditors will reject the plan,
9 attempted to create other impaired classes. We can argue
10 classification down the road that I don't think is an issue for
11 today, unless Your Honor wants it to be, but the debtor is, if
12 I understand it, asking for a ruling today that a nonvote in a
13 class is an accepting class. They've taken each secured
14 creditor who previously was given unimpaired treatment, very
15 slightly impaired them, put each one in a separate class, and
16 hopes that they get some affirmative votes. They either will
17 or they won't, that either is or isn't real impairment. We'll
18 find out at the confirmation hearing. But again, the ruling
19 they're seeking today is that failure to vote in a class
20 constitutes acceptance. That's not the law, it certainly
21 shouldn't be the law on these facts, and the Court should issue
22 no such ruling -- it should rule to the contrary, but it could
23 also simply not rule. That would be okay, too, if the Court
24 wants --

25 THE COURT: Well, let me explore that point. I mean,

1 in some of the cases that have dealt with this issue, it's
2 clear from reading the facts that the Court had not decided at
3 the time of the solicitation --

4 MR. ROSENBERG: Correct.

5 THE COURT: -- whether an empty class would be deemed
6 to have accepted, although it did permit the debtors to put in
7 the disclosure statement, and on the ballot, the debtor's
8 position or the plan proponent's position, that they would take
9 at the confirmation hearing the position that an empty class is
10 deemed to have voted yes. And that at least gave people fair
11 notice and it would encourage them to vote. And frankly, I
12 don't see anything wrong with that.

13 MR. ROSENBERG: Nor do I, Your Honor. That would be
14 a fine resolution for today.

15 THE COURT: Okay.

16 MR. ROSENBERG: It's the seeking of an affirmative
17 ruling from this Court today that we find unacceptable.

18 THE COURT: Okay.

19 MR. ROSENBERG: The final point, then, is the level
20 of disclosure, here, Your Honor. Again, as Your Honor saw from
21 our redacted -- if Your Honor signs the order --

22 THE COURT: And that's redacted because of a
23 nondisclosure agreement --

24 MR. ROSENBERG: No, no.

25 THE COURT: -- and this was labeled confidential?

1 Or --

2 MR. ROSENBERG: Your Honor, it's redacted simply
3 because we didn't want to have an argument with the debtor.
4 What is redacted are our calculations --

5 THE COURT: No, I know.

6 MR. ROSENBERG: -- of the returns.

7 THE COURT: I know. I was just -- it wasn't clear to
8 me what --

9 MR. ROSENBERG: And it's nothing that you couldn't
10 figure out with a simple calculator from that which is in the
11 DIP papers which is quoted directly from the debtors' public
12 disclosures. But the debtor gave us the specific documents
13 from which we calculated it on a highly confidential basis. I
14 don't know why we needed them to so calculate. It wasn't a
15 fight we wanted to have today.

16 THE COURT: Okay.

17 MR. BUTLER: Nor did they ever discuss it with us,
18 Your Honor.

19 THE COURT: Okay. All right. I mean, it didn't seem
20 to me to be information that would be covered by 107, so --

21 MR. ROSENBERG: I --

22 THE COURT: I haven't entered the order yet. I mean,
23 obviously I read the unredacted version since that's what I
24 always get. But anyway.

25 MR. ROSENBERG: Yes. I was just being ultra careful

1 in avoiding an argument.

2 THE COURT: Okay.

3 MR. ROSENBERG: That's all.

4 THE COURT: All right.

5 MR. ROSENBERG: So, Your Honor --

6 THE COURT: Well, maybe, as Mr. Butler's suggesting,
7 we can avoid the need for a sealing order --

8 MR. ROSENBERG: That would be just fine.

9 THE COURT: -- if you could talk that through with
10 the debtors.

11 MR. ROSENBERG: The point is, Your Honor, this is all
12 highly relevant information in terms of the creditors deciding
13 whether or not that which has been presented is something that
14 should be accepted. It is one thing to say that the DIP
15 lenders come first. We know that. It's another thing to say
16 agree to a plan where parties who were selected in a
17 noncompetitive opaque process are getting outsized returns and
18 the arithmetic needs to be laid out in the plan so that
19 creditors can see whether or not what they're being proposed to
20 get is an appropriate return.

21 Of course, in addition -- well, I guess I kind of
22 thematically, Your Honor, laid it all out in that one sentence.
23 It involves how the process evolved, how the plan was or was
24 not negotiated, what the numbers are that go into that plan,
25 and what the projected returns are at the various levels before

1 the unsecured creditors would see a nickel, let alone what the
2 projected returns are after the creditors receive a very modest
3 capped amount of money. So all of that, Your Honor, we believe
4 has to go into the disclosure statement.

5 THE COURT: Okay.

6 MR. ROSENBERG: Thank you.

7 MR. FOX: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. FOX: Edward Fox from K&L Gates on behalf of
10 Wilmington Trust Company as indenture trustee for the two
11 billion of senior debt issued by Delphi Corporation. I'll be
12 brief because most of the points have been covered, but there
13 are a couple of things that I do want to stress.

14 First, with respect to the sale process, although
15 that's been substantially covered, in listening to Mr. Siegel's
16 comments, it sounded at one point as if the goal of at least
17 the secured lenders' concerns is to have a process where they
18 can compete against Parnassus or Platinum. There should be an
19 open process in which anybody can compete, not just the DIP
20 lenders. And I would suggest at this point that some kind of a
21 court-appointed monitor to make sure that that process happens
22 properly and expeditiously would be appropriate. With respect
23 to the disclosure issues --

24 THE COURT: Why wouldn't the creditors' committee
25 advisor be --

1 MR. FOX: The committee would be fine if the
2 committee can -- that'd be fine, Your Honor.

3 THE COURT: I'm just throwing that out as to why one
4 would need an independent -- another party.

5 MR. FOX: The committee would be absolutely fine,
6 Your Honor.

7 THE COURT: Okay.

8 MR. FOX: With respect to disclosure issues, I'll put
9 it succinctly. Creditors who are being asked to vote on a plan
10 modification need to be told what the likelihood is that
11 they'll ever receive anything in terms of the recovery they're
12 being offered and when they might receive it. And neither of
13 those two things is in the supplement to the disclosure
14 statement.

15 Secondly, the chart, particularly that describes
16 recoveries, is confusing because it's not clear in terms of the
17 treatment of unsecured creditors, the fact that apparently the
18 PBGC's unsecured claim which it would receive as a result of
19 the termination of the salaried employee plan I believe will
20 become part of the overall general unsecured creditors' pool
21 which would effectively, I believe, double that pool from three
22 billion in change to six billion. And it's not clear from the
23 chart for unsecured creditors -- or it seems apparent from the
24 chart that the claim to be given to the PBGC is not included in
25 the amount of claims that are listed as unsecured claims that

1 would share in the total capped 180 million dollar recovery.

2 So that needs to be resolved.

3 With respect to the voting issue, again I agree with
4 Mr. Rosenberg on this point. And if you look at the -- whether
5 it's the statute or the rules, it consistently refers to
6 "holders of claims or creditors". In either case, that means
7 you have to hold the claim now in order to vote, not you used
8 to hold it and you no longer have a claim. So the voting
9 deadline needs to be yesterday or today, not fifteen months
10 ago. And we discussed that further.

11 And the final point that there needs to be disclosure
12 about that's relevant to holders of the senior debt is the
13 issue of the payment of the indenture trustee's fees. The
14 original confirmation order which the debtor --

15 THE COURT: Have you seen their blackline on that?

16 MR. FOX: I have not.

17 THE COURT: I think they added something on that.

18 MR. FOX: Okay.

19 MR. SPEAKER: It was attached to the reply.

20 MR. FOX: I didn't stay up till 4:30 this morning to
21 see it. So as long as that's addressed so that people know
22 what the result is going to be.

23 THE COURT: Okay.

24 (Pause)

25 MR. KURTZ: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MR. KURTZ: Glenn Kurtz of White & Case on behalf of
3 ADAH and AMLP. Initially, Your Honor, the plan investors
4 support the debtors' decision to move expeditiously towards a
5 confirmation. We filed a limited objection that simply raises
6 two issues with respect to the disclosure statement.

7 The first issue is it's simply not clear to us who it
8 is that will be authorized to maintain, continue and settle the
9 adversary proceeding with the plan investors. We think that's
10 important information that has to be considered.

11 THE COURT: Right.

12 MR. KURTZ: And I guess on a related point, who will
13 be funding that? And --

14 THE COURT: I assume whoever owns it.

15 MR. KURTZ: Yes, I think that may be right, but there
16 may be a threshold question about who actually owns it. The
17 economics look like they go in different directions. It looks
18 like GM has the claim. The economics go somewhere else. I
19 think there's got to be an alignment, potentially, between
20 those that prosecute a claim and those that would be the
21 recipients of any benefit of the claim. So we're looking for
22 under champerty principles --

23 THE COURT: For disclosure purposes?

24 MR. KURTZ: I think for disclosure purposes so that
25 we know whether we or others would need to show up and object

1 with respect to any of this. I think it's being characterized
2 and treated as a material asset of the estate, and I think
3 there has to be some understanding as to how that will be
4 handled and managed, and I think there has to be some
5 understanding about whether that's legal or not --

6 THE COURT: Okay.

7 MR. KURTZ: -- under champerty principles or
8 otherwise. The second issue, which I suspect is really not an
9 issue at all, there's a lot of statements that are made as to
10 the purported merits and underlying facts and the claims and
11 the defenses and the like. We just want some assurance that
12 there are no rights, claims, defenses, or positions -- I should
13 probably say counterclaims -- that are being impacted in
14 connection with the plan of reorganization. And we have
15 suggested some language which we think makes that clear.
16 That's on pages 4 and 5 of our objection and --

17 THE COURT: You wanted it stated that this is the
18 debtors' views of the litigation and if the litigation is not
19 resolved then the ultimate outcome remains to be determined?

20 MR. KURTZ: Correct, that there's no impairment, that
21 we don't have to come in and object as to the statements that
22 are made. They're just the debtors' statements. The real
23 matter will be resolved by Your Honor in connection with a
24 summary judgment trial or otherwise.

25 THE COURT: Okay. And on that topic, I don't know if

1 it was someone from your office or one of the other parties --
2 obviously I didn't get around to ruling on summary judgment
3 today. I will contact the parties in advance before I give you
4 my ruling, so you don't have to --

5 MR. KURTZ: Wait around for it.

6 THE COURT: You don't have to wait around, right.

7 MR. KURTZ: Other than that, Your Honor, any
8 objections that we have we would raise at confirmation. We
9 just really wanted to ensure that those matters were addressed
10 in the disclosure statement.

11 THE COURT: Okay.

12 MR. KURTZ: Thank you, judge.

13 THE COURT: The objection filed by Mr. Mears, has
14 that been resolved? I think the debtors clarified it in their
15 response.

16 MR. MEARS: Your Honor, this is Mr. Mears.

17 THE COURT: Okay.

18 MR. MEARS: We've agreed to withdraw it. We've had
19 conversations with the debtor and commitments by the debtor
20 that need not been gone into here.

21 THE COURT: Okay. Thank you.

22 MR. MEARS: Thank you.

23 THE COURT: Anyone else?

24 MS. CECCOTTI: Your Honor, I wonder if I might just
25 make a brief statement, having listened to the objectors, if I

1 can get to the podium.

2 (Pause)

3 MS. CECCOTTI: Good morning, Your Honor, Babette
4 Ceccotti, Cohen, Weiss and Simon, for the Auto Workers.

5 THE COURT: Good morning.

6 MS. CECCOTTI: We did not file a pleading with
7 respect to the debtors' motion, having taken the view, as
8 Mr. Butler set out at the outset, that this was largely
9 procedural and that Your Honor would set a schedule including a
10 schedule that would include the filing of additional documents
11 I understand the debtors are going to be submitting. I
12 understand schedules were filed very early this morning to the
13 NDA and we have not had the opportunity to look at those.
14 So we had a couple of minor administerial issues along the
15 lines of record date and so forth that we took up with the
16 folks at Skadden when the debtors initiated the modification
17 process last year, and we didn't think that those merited re-
18 raising again.

19 However, having read the objections and having
20 listened to the lenders this morning, I guess I want to make
21 sure that we have placed on the record the UAW's complete
22 reservation of its rights with respect to whatever process it
23 is that the Court ultimately decides to authorize here today.

24 We understand from reading the debtors' motion that
25 they are intending to proceed with this as a plan process.

1 They have expressed their preference for Delphi to resolve
2 itself through a plan process, consistently, I believe, since
3 the confirmed plan did not consummate last year. We understand
4 that they have incorporated an alternative 363 process or
5 private sale, I guess I should say, as an alternative to that.
6 We understand that our ability to review that will be subject
7 to, again, further documents that they are planning to file in
8 accordance with the schedule laid out in their motion and that
9 we will have an opportunity to review that and if necessary
10 object to it.

11 My concern in listening to what you're being asked to
12 do today by the lenders is to create a process that may not be
13 totally procedural. I think you started to ask Mr. Siegel
14 about the contracts and so forth, and that certainly has
15 generated in my mind a number of questions about exactly what
16 these lenders have in mind when they talk about opening the
17 process up.

18 To the extent that we are talking about something
19 that is not purely procedural and that may come back to
20 encroach upon the union's agreements or other substantive
21 rights, I want to make it absolutely clear that we are
22 reserving absolutely all of our rights in connection with that
23 process, should the Court go down that road. And I just did
24 not want our silence here today to indicate anything other than
25 that fact. So I'm just taking that opportunity --

1 THE COURT: Okay.

2 MS. CECCOTTI: -- to make that point, and I hope
3 everyone appreciates it and understands it.

4 THE COURT: So, for example, if the winning bidder
5 were Wal-Mart, you wouldn't -- I mean, your rights are
6 reserved.

7 MS. CECCOTTI: Excuse me?

8 THE COURT: If the winning bidder were Wal-Mart, your
9 rights would be reserved, obviously.

10 MS. CECCOTTI: If the winning bidder is --

11 THE COURT: Is a nonunion -- you know, a company that
12 is a nonunion shop.

13 MS. CECCOTTI: Let me answer it this way. We have
14 participated -- there have been a number of discrete sale
15 processes throughout this case since its inception, and we have
16 participated, including at the level of bidding procedures,
17 because our contracts give us certain rights to do that.

18 THE COURT: Right.

19 MS. CECCOTTI: And we would expect to, again, reserve
20 all of our rights with respect to any process that the Court
21 decides to enter into.

22 THE COURT: Okay. And I accept that completely.

23 MS. CECCOTTI: All right.

24 THE COURT: It seems to me that the first thing that
25 one considers when evaluating whether a proposal is highest and

1 best is whether it can actually be closed. And if there are
2 legitimate impediments to a closing, then that's an issue. So
3 just as the debtors have throughout this process dealt with the
4 union's rights, I think that any process going forward would
5 have to do that too.

6 MS. CECCOTTI: Thank you.

7 THE COURT: Okay. Mr. Butler?

8 MR. BUTLER: Your Honor, if the Court pleases, I'd
9 like to ask for a brief recess to organize my thoughts and
10 consult with a few parties before I address the objections that
11 have been placed on the record.

12 THE COURT: That's fine. Ten minutes? Fifteen
13 minutes?

14 MR. BUTLER: Fifteen minutes should do it fine.

15 THE COURT: Fifteen? Okay. So I'll be back at a
16 quarter to 12.

17 MR. BUTLER: Thank you, Your Honor.

18 (Recess from 11:28 a.m. until 11:55 a.m.)

19 THE COURT: Please be seated. Okay. We're back on
20 the record in Delphi Corporation.

21 MR. BUTLER: Your Honor, I stand to respond to the
22 objections that were raised on the record by the objectors. I
23 am going to leave to the papers those objections not
24 specifically raised in our responses in our reply brief
25 together with any questions you may have of me as I go through

1 this presentation.

2 THE COURT: Okay.

3 MR. BUTLER: Let me start, if I may -- I'm going to
4 start with just to resolve a few things to clear some paper
5 away from the podium here. Mr. Kurtz got up as the last
6 objector on behalf of Appaloosa with respect to the limited
7 objection. And one of the things he sought was a savings
8 language that would be in the supplement. We did put in
9 savings language in the supplement. It's blacklined in the
10 reply at S-24 and S-25. That makes it clear that the
11 confirmation of the modified plan won't constitute any finding
12 or ruling with respect to any claims, counterclaims and so
13 forth. That language is in the supplement, and I think we
14 should have resolved that concern.

15 With respect to where the plan investor litigation
16 goes in terms of who's acquiring that asset. Under Section
17 2.1.3(iv) of the NDA, the Master Disposition Agreement, which
18 has also been filed, it's clear that -- and is an exhibit to
19 the plan -- it's clear that asset goes to General Motors
20 Corporation under the transaction. In terms of what
21 arrangement GM may have with respect to any other party that's
22 not a debtor to these cases, with respect to that, the
23 prosecution of that matter, I don't believe that's the business
24 of the plan investors. But I mean, the actual asset moves to
25 General Motors under the Master Disposition Agreement. And

1 then there is a, as I think Your Honor's --

2 THE COURT: Well, doesn't a portion of the proceeds,
3 though, go to creditors?

4 MR. BUTLER: A portion of the proceeds, the first
5 nickel of it, would go to the DIP lenders, to the Tranche C
6 lenders from any settlement or judgment in connection with
7 that, yes. But in terms of -- you know, he was asking, he
8 wanted to know who was funding it, who had control over it, who
9 can make decisions about it. I'm not sure as a defendant
10 that's what he gets to know.

11 THE COURT: Well, I agree with that as a defendant,
12 but I think that this provision does leave open a couple of
13 issues. One is it doesn't specify who can settle. And under
14 the Second Circuit case law I think that's an issue you want to
15 clarify.

16 MR. BUTLER: Okay.

17 THE COURT: And secondly, if it's being offered -- I
18 appreciate that this is a disclosure statement and it's being
19 offered to DIP lenders who are not actually voting on the
20 disclosure statement, but it would seem to me that if you want
21 their agreement to a transaction, it needs to be spelled out,
22 at least to them, that it won't just be -- the lawsuit will be
23 actually prosecuted or how it will be dealt with. I mean, if I
24 were them, I'd want to make sure that this offer of proceeds
25 was not illusory. And if the person who owns it doesn't really

1 have an incentive to prosecute it -- and maybe they do because
2 it's 50 percent, not 100 percent, but I just think that as far
3 as that issue, to the extent anyone who is voting on the plan
4 should have disclosure of it, you know, I think you need to
5 disclose it. If they're not voting on the plan, then just as a
6 separate matter I think you ought to go through that with them,
7 and maybe you have. But the thing that I think needs to be
8 clarified is right to settle, given the Second Circuit case
9 law.

10 MR. BUTLER: All right, we will do that, Your Honor.

11 THE COURT: Okay.

12 MR. BUTLER: I think that's the only comments I had
13 on Mr. Kurtz's objection. Let me then turn to the DIP lenders
14 and then I'll work backwards through the rest of the -- or
15 forward, as the case may be, through the rest of the
16 objections. First, we heard from Mr. Abrams and from
17 Mr. Bernstein and from Mr. Siegel. Let me start with
18 Mr. Abrams and his comments. Your Honor, I think -- and to the
19 extent that he didn't address the information issues, I think
20 Siegel may have, and let me just make clear on this record a
21 couple of items.

22 First, the two principal advisors to the DIP agent
23 and steering committee, Alvarez & Marsal and Blackstone -- and
24 in fact up until recently Blackstone was the advisor to the
25 Tranche C collective. Those parties have had access to the

1 same electronic data rooms at Delphi that Platinum and other
2 interested bidders have had access to since January of this
3 year. They've had access for over five months. This business
4 about not having information is just utter rubbish from the
5 debtors' perspective. Those advisors have had access since
6 January.

7 Elliott -- which is Mr. Siegel's client through a
8 different name, Elliott Associates, which actually manages the
9 funds that have filed that objection -- obtained access in May
10 of this year through their separate advisor who recently, in
11 the last day or so, had their access turned off because they
12 refused to sign an NDA. We gave them access on the promise
13 they would sign an NDA. When they never signed one we turned
14 the access off in the last couple of days, and we'll turn it
15 back on if they sign an NDA under the terms that have been
16 discussed with chambers. Silver Point, the other who has led
17 the Tranche C collective, has had its own direct access since
18 February 5th of this year, and its advisors -- its other
19 advisors, since they all have multiple advisors, Storm (ph.)
20 and CCG Advisors, have had access since May 10th of this year.

21 So for there to be a suggestion that the DIP lenders,
22 through their key advisors, and in the case of Blackstone and
23 Elliott, particularly -- excuse me, Silver Point and Elliott,
24 and particularly Silver Point, have not had access over these
25 many months to the same information that Platinum and other

1 potential parties have considered, just is not accurate.

2 Similarly, Mr. Rosenberg's comment -- he may just not
3 have the information correct, because his characterization I
4 disagree with -- there was an unsolicited bidder that
5 approached the company a few weeks ago who withdrew on their
6 own. They weren't sent away. And if it ever becomes an issue,
7 I can put all the papers and evidence into the court. But it's
8 not the case that this company has ever sent any bidder away as
9 we've worked through these cases over the many months that
10 we've been trying to find capital.

11 I think the one thing that has been apparent to
12 anyone who's been following this case anywhere on the planet is
13 that this company has been seeking out capital, leading up to
14 the plan investor transaction which was represented by the
15 confirmed plan, and certainly thereafter for the last fourteen
16 months.

17 Let me also say that while the DIP lenders may be
18 having a change of heart now and the capital markets may be
19 changing and there may be other things out there in the economy
20 that are changing their views, including who owns what piece of
21 the DIP, because there's constant trading in the DIP these
22 days. The fact of the matter is that Delphi was summoned to a
23 meeting by the DIP steering committee on April 6th of this year
24 and was told quite plainly at that time, that at least as of
25 that moment, there was no emergence capital coming from the DIP

1 lenders to Delphi and that we should plan our exit or emergence
2 with that understanding.

3 Now, things change, but to somehow suggest, in papers
4 or at this podium, that there has not been a continuing good
5 faith dialogue between our DIP steering committee and the
6 company on these realm of issues over the last number of months
7 since the accommodation agreement was entered into, I just
8 don't think is doing justice to the hundreds of hours of time
9 that have been developed and devoted to these conversations and
10 the access to information. And one only has to look at the
11 millions of dollars of bills that the company has paid in
12 advisor's fees to the DIP lenders since the accommodation
13 agreement was entered into. And one presumably could look at
14 the detail of those bills to just understand how pervasive the
15 access and the due diligence has been.

16 And I just want this record to be clear that this
17 company is not turning away people and this company has
18 provided as transparent -- in terms of information, as
19 transparent a process to our DIP lenders as we should be
20 expected to. And we should be expected to. The fact is -- and
21 I think the company's been the first to say this, I said it
22 earlier in this hearing -- this has been an extraordinary time
23 in this case, in this economy and in the restructuring industry
24 and certainly in the automotive industry. And we have done all
25 that we can do to try to reasonably cooperate with people.

1 I don't want to stand here, Your Honor, and re-
2 litigate the protective order. There's an order that's entered
3 here and there's a process, presumably, in that order if people
4 want to seek modifications of it. And we can respond, but
5 there is a protective order that's been entered by the Court.
6 We certainly are going to abide by its terms, and it's a matter
7 of public record.

8 I do want to address Mr. Abrams' comments regarding
9 the board and the exercise of its fiduciary duties. While I am
10 sorry that he and his clients apparently have zero confidence
11 in that process, and while I acknowledge that in his remarks,
12 towards the end of them, he moderated the views in his comments
13 as to whether or not the directors were good and honest, and
14 seemed to moderate his views and essentially take back the
15 allegation that they might not be. The reality is that these
16 directors, the vast majority of whom are independent directors,
17 have worked tirelessly throughout these Chapter 11 cases to
18 maximize value for stakeholders and to fulfill their fiduciary
19 duties under Delaware law. Your Honor has made that judgment
20 on specific instances numerous times during these cases, and
21 the directors are no less vigilant.

22 The fact is -- and it is at this moment an
23 irrefutable fact -- the fact is that despite all of the access
24 that the DIP lenders have had information for the last six
25 months, and despite all of the things that have occurred in the

1 last six months, the only fully feasible, fully funded
2 transaction that we have to move forward with is the
3 transaction that we filed on June 1st. And I am not --
4 although I have the right under 408, in fact, to talk about
5 settlement matters to impeach or repudiate statements made to a
6 Court, I'm going to refrain myself from doing that. But there
7 were opportunities -- clear opportunities that the DIP lenders
8 had to pursue other transactions that were offered over the
9 last three months which they declined.

10 Having said all of that, as we have said at every
11 single hearing where we've had to deal with these issues,
12 Delphi recognizes its fiduciary duty, and we are trying to
13 maximize value for stakeholders, but that doesn't mean that we
14 necessarily always agree with our stakeholders about what the
15 process is for doing that.

16 And I would simply indicate, Your Honor, that I
17 thought in the first six or seven pages of our reply, we could
18 not have been clearer to the Court or clearer to the
19 stakeholders here about how the company would behave over the
20 next five weeks leading into the July 23rd hearing. If the
21 company receives an unsolicited offer, it will consider it. If
22 the company receives a request for due diligence and people are
23 prepared to sign a reasonable nondisclosure agreement like the
24 three dozen or more that have already been signed in these
25 cases by other parties over the course of the last many months,

1 the company will provide them information to make that
2 evaluation and try to sort that out. What the company is going
3 to do in the interim, what it proposes to do, is to honor its
4 commitments otherwise under the Master Disposition Agreement.

5 When I look to Mr. Bernstein's comments --

6 THE COURT: Well, let's stop on this point. I
7 believe what you just said, but what you just said is somewhat
8 contradictory, given the language of 9.40 of the NDA. I
9 appreciate it has a fiduciary out, but the language here is
10 broader than any language I've ever seen in a provision like
11 this. In addition to saying, "The debtor shall not solicit or
12 initiate", it says "The debtor shall not respond to, continue,
13 encourage, or facilitate or furnish or disclose nonpublic
14 information in furtherance of any inquiries or the making of
15 any proposal with respect to, or enter into or continue in any
16 negotiations or discussion with any person regarding the
17 possibility of a competing transaction."

18 Now, I appreciate there's a fiduciary out in
19 connection with that, but it seems to me that given all of that
20 language, unless there's a really, really good reason, which
21 the papers don't disclose, that this is essentially a private
22 sale, I think that the assertion of a fiduciary out here is
23 going to raise litigation issues.

24 MR. BUTLER: Well --

25 THE COURT: And I don't -- I mean, given that this

1 language is so antithetical to the normal process, and I would
2 expect it only to be in a document where the Court is satisfied
3 that the debtor has, through a private sale, maximized the
4 value, would I let a debtor go down this path. It just seems
5 to me that, particularly given the timeline that the DIP
6 lenders have said that they're willing to abide by, and I think
7 that is in light of the fact that there has been enormous
8 amount of information provided to them that the debtors have a
9 data room, etcetera, why even get into this issue? I mean, it
10 just seems to me -- why are we not permitting a process that's
11 one where there can be a higher bidder?

12 MR. BUTLER: Your Honor, I think what we're doing
13 here is trying very hard not to mislead the Court. And I think
14 it's extremely important that the Court look at the substance
15 of this transaction. I think there was a reason Ms. Ceccotti
16 chose to get up from the UAW, in light of the comments of the
17 DIP lenders, and reserve the UAW rights. The fact of the
18 matter is that the transaction that we're pursuing pursuant to
19 a private sale, which is permitted by this district, and
20 permitted -- and there was a major case just decided in the
21 District of Delaware on this point --

22 THE COURT: Mr. Butler, I wrote those guidelines, all
23 right? And it's very important to remember that the guidelines
24 say that if you're going to pursue a private sale you've got to
25 say why. And it's an important -- it's a burden to overcome.

1 MR. BUTLER: And the nature of it is this is a unique
2 transaction. And the transaction involves -- as you know, Your
3 Honor, the Master Disposition Agreement is a three-party
4 transaction. In order for it to be successful, not only does
5 there need to be an appropriate equity partner going forward
6 that is acceptable to General Motors that we're able to -- but
7 General Motors had to fundamentally alter their relationships
8 going forward with the company and make sure that we were able
9 to move forward in that transaction.

10 THE COURT: I understand the GM piece of it. I don't
11 understand why -- and particularly from what's been disclosed,
12 what's so special about Platinum? I mean, they probably have a
13 lot of money. They have good lawyers. Other people have a lot
14 of money and have good lawyers. As far as I'm concerned,
15 they're just guys in suits.

16 MR. BUTLER: Right. Well, I --

17 THE COURT: I mean, why can't other guys in suits pay
18 more?

19 MR. BUTLER: Right. Well, the other guys in suits
20 can pay more if they're acceptable as partners to General
21 Motors.

22 THE COURT: Well, all right, but --

23 MR. BUTLER: No, but that's not to be -- I mean, I
24 want to say it. That is not to be a fact that -- you know, I
25 just need to say -- is overlooked here. We have for the last

1 six months, almost the last fourteen months, but the last six
2 months we have been searching for solutions to that three-
3 legged stool we've talked to everybody about.

4 THE COURT: I understand that, but unless -- and
5 there is a provision in here that says there are no undisclosed
6 agreements between Platinum and GM.

7 MR. BUTLER: Right.

8 THE COURT: But I don't know what makes Platinum
9 acceptable to GM and why Platinum is unique in this regard. I
10 mean, it just -- it doesn't really come through. They may be,
11 and it may be that ultimately if, I don't know, you know,
12 whatever hedge fund, if ever one does, and goes to GM and says
13 we'll do the same things but we'll pay more. I just -- it
14 doesn't -- it seems to me that unless I hear more, there's
15 something going on here that just doesn't seem to make sense.
16 I mean, I understand that GM wants to move quickly. I
17 understand that GM would like to have their relationship
18 clarified. But if you're moving on the same timeline --

19 MR. BUTLER: Well, Your Honor, as we disclosed in our
20 papers and disclosed to our stakeholders, GM's top priority in
21 all of this -- as GM has indicated, Your Honor, you know, to
22 the company we've indicated in our papers, the number one
23 priority for General Motors is continuity and protection of
24 supply, which is why GM is putting in the billions of dollars
25 that they have disclosed publicly in their 8-K, and why they're

1 waiving billions of dollars of additional claims against the
2 company, including by the way, the 250 million dollar interim
3 financing facility Your Honor has provisionally approved.

4 THE COURT: Right.

5 MR. BUTLER: They're doing that for protection of
6 supply. They have made a judgment that they are comfortable
7 with Platinum as a partner and as the ultimate owner of the
8 company with respect to protection of supply issues. That's
9 their judgment. You've asked me to stand up and try and -- I
10 can't get into their head as to why that is, Your Honor.
11 That's their judgment, and they're the ones that have put
12 billions of dollars at stake riding on that judgment. All
13 right?

14 And the reason I think this is uniquely appropriate
15 in terms of a private sale transaction, subject to the
16 protections I already put in the papers and want to talk about
17 in a second, is that this is a transaction that will depend on,
18 among other things, the unions being comfortable that they will
19 assign their contracts, that they won't object to the
20 assumption of their contracts, General Motors being satisfied
21 that the concessions into making the new Delphi as it moves
22 forward are appropriate based on the people who are going to be
23 controlling that company.

24 And those are judgments that are really outside of
25 the debtors' control. Delphi doesn't control -- no one at

1 Delphi controls those judgments. There are real elements of
2 this transaction. Someone who walks in and says "I want to pay
3 X amount of dollars", a dollar more, a hundred dollars more, if
4 GM says I'm not prepared to do a deal with those folks, I'm not
5 prepared to give them that supply agreement, I'm not prepared
6 to enter into the same kind of ancillary documents with them,
7 I'm not prepared to accept that kind of governance with them,
8 then it's a fundamentally different transaction. And that's
9 the point here is that this --

10 THE COURT: But that's all if, right? We don't know
11 that yet.

12 MR. BUTLER: No, Your Honor, we don't know whether or
13 not GM -- and by the way, that's always the case in a private
14 sale, you don't know. But the question is does it have the
15 contours? Is this a straight-up sale of assets? And the
16 answer is it's not. It's a very complex transaction which in
17 fact, among other things -- and I think most of the people in
18 this room would acknowledge that I've been the preacher for a
19 plan here. There are a lot of people who would just as soon do
20 this as a sale, and I've been one of the people who's been
21 advocating trying to comprehensively address the issues in this
22 case, as Ms. Ceccotti noted, through modifications to the plan,
23 and therefore create a vehicle pursuant to which unsecured
24 creditors could get, potentially, down the line, some value
25 under some circumstances, as opposed to nothing, because under

1 a sale they get nothing. And I'm a little confused by
2 Mr. Rosenberg's argument because if there's a sale they won't
3 get anything.

4 THE COURT: Well, you can have a bidding process in
5 connection with the plan and a sale. I mean, both things go
6 together.

7 MR. BUTLER: Right. But as Your Honor's pointed out
8 to me when we did the plan investor process, under 1123 you do
9 not need, for plan investors or for transactions under a plan,
10 to have a separate bidding process. It's not required. And
11 the --

12 THE COURT: But that's in a case where you had had
13 the process, right? I mean, you had a bidding process for the
14 plan sponsor originally.

15 MR. BUTLER: Your Honor, we've been in a process with
16 the DIP lenders since January. I mean, somehow -- that's why I
17 don't want the Court to be misled here. I don't believe that
18 the agent, that Mr. Bernstein is going to stand up and say,
19 "Oh, no, we didn't have access to the Platinum information
20 since January." I don't think Mr. Bernstein is going to stand
21 up and say, "Oh, no, Judge, we didn't tell them on April 6th
22 there was no capital for them." I don't think he'll
23 misrepresent what was said.

24 THE COURT: I understand that, but I also --

25 MR. BUTLER: Okay. So --

1 THE COURT: I also want -- I mean, there's really
2 nothing in here about Platinum. I don't even know if the
3 equity commitment is attached. And they just seem to sort of
4 come out of nowhere. And it just seems to me that, unless I'm
5 missing something, I don't see why there shouldn't be an
6 opportunity for someone to come out of nowhere or somewhere and
7 say I'll fund a plan that's better or I'll fund a sale that's
8 better or you know, permit -- and if it doesn't happen, then it
9 would seem to me that the record really is clear at that point.

10 MR. BUTLER: But, Your Honor, we have permitted that
11 process, and our reply contemplates that process. And I said
12 it in the last part of the preliminary statement, this
13 liquidity runway that GM is providing of 250 million dollars
14 through July 23rd provides the opportunity for unsolicited
15 offers to be considered by the company. That process is there.

16 THE COURT: It doesn't really. This paragraph
17 doesn't really say that. It just doesn't.

18 MR. BUTLER: Well --

19 THE COURT: And I've already basically said that on
20 the conference calls we've had.

21 MR. BUTLER: Well --

22 THE COURT: And something else is going on here in
23 this paragraph that is not being explained to me. I'm just not
24 comfortable with this.

25 MR. BUTLER: Your Honor, let me try and be as clear

1 as I can, and Mr. Abrams and Mr. Tanenbaum are here and they
2 can address the Court or they can dispute my view. This is a
3 provision that was required by General Motors and Platinum as
4 we were completing the Master Disposition Agreement. We
5 insisted on the fiduciary out, and we told them clearly -- and
6 I think they would acknowledge on this record -- that we would
7 continue to provide information to people who approached us and
8 that we would continue to consider, in accordance with our
9 fiduciary duties, any unsolicited offer that we received, and
10 that neither of those would be a breach of the NDA or any of
11 the related transaction documents.

12 I think that Mr. Tanenbaum and that Mr. Harris and
13 their clients expressly understand that and are expecting it,
14 and if anything, I think as it relates to the DIP lenders,
15 because there's not a parade of other people around -- with
16 respect to the DIP lenders, I think they probably would like to
17 know from the DIP lenders, sooner or later, whether they're
18 going to actually put together an alternative transaction or
19 not. They would probably prefer that.

20 But just to be clear, this record, I think, is
21 crystal clear on the fact, and I think our papers are crystal
22 clear on the fact that we will in fact provide that information
23 and we will in fact consider those offers. But what we are
24 not -- the part that we're focused on that we're not permitted
25 to do is that we're not prepared to solicit, initiate, do that

1 kind of process going forward in connection with this
2 transaction, not when the same people who are providing this
3 fully funded emergence transaction which is feasible for the
4 company are also providing the 250 million dollars to operate
5 over the next six weeks to eight weeks. I mean, they're
6 providing the funding and they're providing a deal that
7 actually works. I'm the one that wants it to work along with
8 our client under plan --

9 THE COURT: I don't have, particularly, an issue with
10 the solicitation provision, because there are lots of other
11 people involved in this case, and this case is high profile. I
12 have not heard either party to this agreement, either of the
13 nondebtor parties to this agreement say that what you're doing
14 is right. I spent six hours with another hedge fund two days
15 ago where there seemed to be plenty of statements by the debtor
16 saying this is what we're doing. And the hedge fund said well,
17 it doesn't matter, the condition is what it is and we're
18 relying on it. And it just seems to me, if this doesn't
19 describe what the debtors are going to do, then we should
20 change it and make it clear. I don't want to get in a
21 situation where people say there's no deal.

22 MR. BUTLER: Mr. Harris? Mr. Tanenbaum? Do you want
23 to address the Court on that subject, please?

24 MR. HARRIS: If I may, Your Honor.

25 THE COURT: And again, what I'm really talking about

1 here is all of the stuff that really handcuffs the debtor once
2 someone contacts them.

3 MR. HARRIS: Your Honor, let me, if I might, just
4 give you a little bit of background because Your Honor asked a
5 lot of questions about who Platinum is and I'll just give you
6 the thirty second --

7 THE COURT: Okay.

8 MR. HARRIS: -- because I think it bears on actually
9 how the provision's written and how it got to where it is,
10 including the breadth of it. And the fact of the matter is,
11 there's a lot of guys at Platinum who do wear suits, there's a
12 lot of guys at Platinum who don't wear suits, including the
13 forty operational people that we have on the ground that we
14 have that have been working on this matter to develop all the
15 operational plans that we intend to implement, assuming this
16 transaction goes through.

17 We came knocking on Delphi's door to get involved in
18 this process some time ago, and it took our effort and the
19 efforts of everybody at Platinum to basically convince both
20 them and GM that we were real, we knew what we were doing, and
21 that we had the resources to actually implement a successful
22 turnaround here, not only because of the money we were prepared
23 to put in but also because of the operational expertise that we
24 could bring to the table.

25 And that was no easy task, frankly, because like Your

1 Honor, Platinum is a private investment fund. We invest money,
2 we try and get returns. I mean, Mr. Rosenberg doesn't like how
3 much he thinks we're going to make here, but the fact of the
4 matter is, that's what we do it for. But we also have
5 successful outcomes, and we do it not only for our benefit but
6 for the benefit of others as well, including union members and
7 those who are in the employ of these companies that might not
8 otherwise survive.

9 So when we negotiated this provision, Your Honor, it
10 was on the back of this company having had fourteen months of
11 effectively being rudderless, their plan investors having
12 walked away, and having devoted substantial resources in the
13 face of, frankly, everybody in the entire world who's in this
14 business or wants to be in this business having the opportunity
15 to do exactly the same thing we did, which was knock on
16 Delphi's door, knock on GM's door, and see if there was a
17 transaction that they could negotiate that made any sense for
18 all of those parties.

19 We undertook that process, Your Honor. We
20 successfully made our way through that. The DIP lenders could
21 have done it at any point in time. They chose not to do it.
22 And because of how far we'd come and what we'd invested in
23 this, we talked to the company about two different
24 possibilities. One was do we go the traditional route of
25 bidding procedures, breakup fees, that whole deal, which was

1 one source.

2 We sat with the company and were convinced that
3 proceeding in the way that Delphi wanted to go forward on a
4 private sale through the plan or alternative 363 was the right
5 way to do it. But in return for that, we wanted the company to
6 continue to be focused on moving forward with transactions
7 other than those that they believed, in their fiduciary duty,
8 have a real prospect of moving forward.

9 We didn't totally handcuff the company, Your Honor.
10 We obviously understood the need for the fiduciary exceptions
11 here. We think it applies, frankly, to all of the sub-clauses
12 of Section 9.40, and I believe that Mr. Butler and his
13 colleagues, in consultation with the board, are going to do
14 what's right for the estate in terms of responding to and
15 otherwise dealing with unsolicited offers that come across the
16 transom.

17 We fully expected, Your Honor, that once this became
18 a public deal, there could well be other parties who would be
19 interested in either stepping into our shoes or offering a
20 similar transaction. We understood that risk and we did it,
21 but we wanted to make sure that the company was focused on only
22 those that they thought had a reasonable prospect of going
23 forward.

24 The DIP lenders, Your Honor, have always been in this
25 game. They've been here well before we got here. They could

1 have at any time done what they're now saying they want to do.
2 And if they step up and do it and they make a proposal, the
3 company's obviously going to have to respond to it and give
4 them whatever it is they think they need. The non-solicit,
5 Your Honor, in my view, is fully qualified by the fiduciary
6 out. We don't intend to use it as a basis for litigation here.
7 We want to do this deal. We want to close this deal. We
8 understand the company has to look at other alternatives that
9 are presented, to the extent they have a reasonable prospect of
10 getting done. That decision is the company's decision. It's
11 not our decision.

12 And I suspect that Mr. Butler and his colleagues, in
13 advising the board, are going to broadly interpret that so that
14 it can come back to Your Honor at the appropriate time and say
15 we entertained as many unsolicited offers as we got, we looked
16 at whatever people were throwing in there. We looked at who
17 they are and what their financing is and what their
18 relationships are what their experience in the industry is, and
19 concluded that they either were or were not potentially viable
20 bidders here who were worth devoting management time and
21 resource to for purposes of evaluating alternative
22 transactions.

23 So we're not looking at this as a fodder for
24 litigation in any way, shape or form. And frankly, we're not
25 looking at it as an out to try and get out of a transaction

1 which we've been really working hard at and devoting
2 substantial resources to in order to stay in. We want to do
3 this deal. We spent enormous amounts of time and money to get
4 to the position we're in right now. We understand the company
5 has a fiduciary obligation to its constituents to entertain
6 other offers that are submitted, and we fully expect that they
7 will perform in accordance with that as we go forward.

8 THE COURT: Okay. Thank you.

9 MR. TANENBAUM: Your Honor, this is clearly a unique
10 process and I just want to give you some views from the GM
11 perspective as to how we are looking at this private sale
12 scenario. Mr. Butler did state that protection of supply is an
13 incredibly important piece of any equation here in terms of
14 doing a transaction. General Motors' primary goal here, in
15 many respects, is to gain a maximum amount of comfort with the
16 counterparties it's going to have to deal with going forward.
17 I can't express the importance of that. We've had numerous
18 discussions over the past six to twelve months with a number of
19 parties.

20 I think Mr. Butler clearly expressed the openness and
21 transparency of this process. We have met with the DIP
22 lenders. And, I'll use the words for better or worse, because
23 everybody can characterize those meetings. We have exchanged
24 term sheets with the DIP lenders. We had another party at the
25 table with us simultaneously with Mr. Harris's clients. We

1 negotiated heavily with both of them, and that other party
2 happened to walk at the last minute. These agreements are
3 incredibly complex. There are commercial agreements that deal
4 with the interaction of the parties throughout the world
5 globally as well as domestically.

6 Let us not lose sight of the fact as well, as part of
7 this comfort level, the federal government is funding billions
8 of dollars into this transaction. The comfort level equates
9 with being willing to invest two and a half billion dollars of
10 debt and equity into the transaction with Platinum. It
11 incorporates the concept of paying up to a billion dollars for
12 domestic sites, keep sites, or UAW sites, as we call them and
13 also pay Trance A, B, and C claims as part of that process.
14 The total numbers could end up at a level of four billion
15 dollars, give or take. So it is incredibly important, and this
16 is a unique situation. This is not just somebody coming in at
17 the eleventh hour and saying, here I am, I'd like to step into
18 the shoes of somebody that we've spent two months negotiating
19 with and getting comfortable with and saying our offer is
20 higher, you have to accept that.

21 And I want the Court -- I think everybody in this
22 courtroom understands what we're dealing with here. We are
23 going to be going to court in the General Motors case shortly
24 to seek approval of what we need to do here. That approval is
25 likely to be sought prior to July 23rd. That's not to say

1 that's going to be the end of the day or that we can't go back
2 and modify that. We are on an incredibly tight timeline here.
3 I don't know when the GM case expects that that sale might be
4 approved or when it might close, but what we're trying to do
5 here is simultaneously deal with an incredibly important
6 situation for both the Delphi Chapter 11 case and the General
7 Motors Chapter 11 case.

8 We're not looking to waive anybody's rights. I agree
9 with Mr. Harris's assessment of the provision. We've had a
10 discussion amongst ourselves. Mr. Butler's statements about
11 entertaining other parties is absolutely accurate. But I do
12 want people to appreciate what's gone into the documentation we
13 have to date, and going backwards and understanding the number
14 of parties and the openness of this process.

15 So we do have a five week, six week window before
16 July 23 to preserve due process for people in this courtroom
17 that have asked for it as well as others that may come to the
18 fore. But let's not lose sight of the fact that we've been at
19 this for a very long time, there are billions of dollars
20 committed to this transaction, and it's important for everybody
21 here that this move forward. So I think that I would reiterate
22 and agree with the words of Mr. Harris and Mr. Butler
23 concerning what the intent of that provision is, but I also
24 wanted the Court to understand from General Motors' perspective
25 what it is dealing with here and how it is trying to move

1 forward on a number of fronts.

2 THE COURT: Okay. Are you finished?

3 MR. BUTLER: I haven't started.

4 THE COURT: Well, on this issue, on this process
5 issue.

6 MR. BUTLER: I'm sorry, I didn't realize I was going
7 to need to stop at each issue. I'll stop and hear what he has
8 to say.

9 THE COURT: Okay. Well, why don't we deal with this
10 process issue?

11 MR. ABRAMS: Your Honor, I'm going to be brief and
12 I'm going to stick to the process issue. I think I know
13 Mr. Butler now for a long time and I know him to be a very
14 effective advocate, and frankly, I thought his defense of the
15 current posture of these cases, and in particular his response
16 to Your Honor's questions, were completely lacking. And I say
17 that with all due respect, but the reality in these cases today
18 is that they had been hijacked. Where the sine qua non of a
19 transaction in this case becomes the acceptability of a third
20 party to the company's largest customer, and we're told that
21 because of that and the fact they had a veto over what unfolds
22 in this court by way of an M&A process, that does nothing but
23 reinforce the need for Your Honor to be actively involved in an
24 open and fair M&A process.

25 And if you take a step back -- and I have to, in all

1 due respect to Mr. Harris who's a newcomer to this case, and
2 frankly the fox in the hen house -- if you take a step back and
3 you realize that GM has secured up all of its U.S. assets in
4 this transaction, and that what we're talking about is the
5 acceptability of Platinum with respect to the operation of the
6 rest of the world, where GM, at best, is a twenty percent
7 customer on a blended basis with respect to Delphi's output,
8 then where is Mercedes Benz? Where is Fiat? Where is every
9 foreign OEM? And where are they in respect to this transaction
10 and their consent because they're more dependent upon the
11 European platform than General Motors.

12 So what is this excuse about General Motors and
13 whether or not a partner's acceptable to them? Frankly, who
14 cares? We don't care if it's acceptable to them. They don't
15 want us as their partner. They made that clear. Someone has
16 hand-picked Platinum for reasons that are just completely
17 beyond the pale at this point. And we're told that we should
18 sit back and allow a private sale to unfold because the largest
19 customer in this case who is protecting its supply of parts and
20 who has to put money into this company again, like everyone
21 else has done, so it can buy its parts, happens to like that
22 party.

23 It's ridiculous what's unfolding here. This case has
24 become a subsidiary of the General Motors situation. That is
25 not what this case is about. It's about the stakeholders

1 before Your Honor and whether we're getting a fair return. And
2 these arguments are complete rubbish, not this argument about
3 information and access to a data room, the arguments that are
4 being made today are complete rubbish.

5 And the reality is that this process has been not
6 constructed in a fair way. The playing field is completely
7 tilted against every stakeholder in this courtroom, and
8 something has to be done about it at this point or we're all
9 going to have to resort to remedies. And GM has no veto over
10 remedies, and that would be the worst case for everyone in this
11 courtroom. GM, the DIP lenders, the unsecured creditors, the
12 United States, that would be the worst conceivable outcome.
13 And all we're doing now is looking at a blueprint for
14 litigation and foreclosure, not a consensual deal.

15 People have to wake up and get real about this
16 situation. This is not fair. It's inequitable. And the
17 excuses that have been cocked up in this courtroom today are
18 just incredible. They are so unpersuasive, it's almost hard to
19 believe they're being made. "We'll do the right thing."
20 "Trust us." "We've been knocking on the door for a long time."
21 You know what? We've been led down the primrose path since the
22 beginning of this year to May on some white elephant stand-
23 alone plan where GM and Delphi were going to deliver a deal for
24 us, while people are knocking on the door unbeknownst to us,
25 and now we're supposed to say okay, we were a little busy on

1 this detour, this frolic?

2 Oh, come on, Judge. This makes no sense, what's
3 unfolding here, and it's completely inappropriate. And to sit
4 here and say that we should trust anyone when they have erected
5 barriers to competition that are so substantial that we're
6 told, "Don't worry, rest on this slender reed of a fiduciary
7 out." Fiduciary outs are not static. When a board is
8 confronted with a fiduciary out two months from now, and the
9 company's on fumes and has a dollar in the bank, what's the
10 fiduciary going to do at that point? Pull the plug? I don't
11 think so. It is an evolving process. That out is absolutely
12 worthless to us, and it's not something we're going to rely
13 upon, and it's not something you should rely upon as the Court
14 overseeing this proceeding, because it takes away all of Your
15 Honor's judicial oversight and powers in this case under the
16 Code and reposes it, I don't know where, but certainly not in
17 the hands of Delphi and its board of directors.

18 MR. BUTLER: Your Honor, the one thing that
19 Mr. Abrams said in that discussion that I think we both agree
20 on, and it was a caution that Mr. Bernstein laid out earlier
21 which I think is an appropriate caution. And that is that in
22 fact, contrary to Mr. Abrams' statements, these cases have not
23 been hijacked. There's a transaction here. And if at the end
24 of the day the DIP lenders conclude that that transaction is
25 not in their best economic interests, they have remedies that

1 they can pursue.

2 There is always the alternative here of the DIP
3 lenders foreclosing on these assets. That's been available to
4 them at various times since December. I am hopeful that is not
5 what they will do. I think that people who are trying to move
6 this transaction to closing need to understand those risks.
7 And hopefully those issues will cause people to continue to
8 talk with each other between now and July 23rd.

9 I think Mr. Bernstein's caution was a fair one that
10 the agent doesn't look forward to getting that kind of
11 instruction, and whether that instruction is forthcoming or
12 not, I think is a matter of speculation not certainty, even
13 under the transaction that has been proposed.

14 But the fact of the matter is, I don't think this
15 record could be clearer, and Mr. Abrams, first having argued
16 with his colleagues that they weren't getting information, now
17 when I put the facts in the record, having said well, those
18 don't matter any more, the fact is the DIP lenders have been
19 getting information, the same information as Platinum, the same
20 information as other prospective bidders since at least
21 January. And we've already entered a protective order on how
22 as DIP lenders they'll get information. We have an NDA out on
23 to them on how they'll get it as acquirers.

24 We had made it clear on this record, and you've heard
25 the acquiescence of both Mr. Harris and Mr. Tanenbaum that

1 we're going to continue to provide information to these or
2 other bona fide unsolicited offers and work with the DIP
3 agents, and we're going to continue to evaluate transactions in
4 our fiduciary duties, and clearly, as with any sale transaction
5 or any plan transaction, whether this is an 1123 transaction
6 before you on July 23rd or a 363 transaction, if the DIP
7 lenders are unhappy with it at that time, they'll have either
8 had the opportunity to have exercised their remedies before
9 that time or they will -- seeing as the accommodation period
10 ends I think tomorrow -- or they will have the opportunity to
11 inform the Court that they disagree with our conduct over the
12 preceding six weeks. I don't think that they will, at the end
13 of the day.

14 I think we have done the right thing and will
15 continue to do the right thing, and the reality is, as Your
16 Honor pointed out at the beginning of this hearing, there will
17 be no disposition of merits of the Master Disposition Agreement
18 until July 23rd and you'll have a complete record at that time
19 as to what has occurred.

20 THE COURT: I guess I'm having a hard time seeing how
21 what the DIP lenders and the committee have proposed hurts the
22 debtor. And why to the contrary it doesn't make it clear to
23 people who -- I guess there are still credit committees, right,
24 or bosses -- they can go to their boss and say look, there is
25 nothing funky about this, we got what we wanted, and it didn't

1 pan out, or, you know, maybe it did pan out to this extent.

2 Why is that a bad thing? How does that hurt the debtor?

3 MR. BUTLER: Your Honor, to the extent that we are
4 doing a process that -- and Your Honor understands in approving
5 some alternative process that takes into account the realities
6 of this case and the timeline, I suppose it doesn't prejudice
7 the debtors. But the point is that the unions will have to be
8 satisfied. General Motors will have to be satisfied. All
9 right? And those are outside of the control of the debtors.
10 We've brought -- Your Honor has asked us --

11 THE COURT: No, they don't have to be satisfied.
12 There is an alternative here where no one's satisfied. I mean,
13 that is an alternative.

14 MR. BUTLER: Right.

15 THE COURT: And so why not try to keep everyone as
16 satisfied as possible? Why cut it off now?

17 MR. BUTLER: But we're not cutting it off now.

18 THE COURT: Well, you know, I hear what you said and
19 I clearly heard what Mr. Harris said, and I very much
20 appreciated what he said. I heard what Mr. Tanenbaum said.
21 But nevertheless, it's said in the context of opposing this
22 request, and I'm not sure, you know, how to take it in that
23 context.

24 MR. BUTLER: Well, look --

25 THE COURT: People, in my experience, have come out

1 of the woodwork. That has happened. That happens in cases,
2 even cases of this size. And people who have great records
3 with unions have come out of the woodwork at times. Maybe
4 you've already talked to those types of people. Maybe you
5 talked to them six months ago and now that they see where
6 Platinum is with GM and they have some sort of an idea, or
7 maybe now that things have gone to where they've gone in the
8 Chrysler case -- there could be a whole slew of reasons why
9 that has changed.

10 And it seems to me that if I were to deny the
11 creditors' objection on this point, that it wouldn't be a
12 particularly good message to those people, notwithstanding what
13 you've said, notwithstanding what Mr. Harris and Mr. Tanenbaum
14 said. It just wouldn't be that good a message to them. It
15 does seem to me that one should put some parameters around --
16 if we're going to go down a process like this, one should put
17 parameters around it so that the people who are saying they
18 want to embark on that process actually follow it as opposed to
19 just using it as a pretext for trying to increase some sort of
20 leverage in an objection.

21 And I've looked carefully at that issue. I don't
22 think this process creates any sort of opportunity that the
23 parties and I can't manage for people being mischievous, as
24 opposed to trying to maximize value. I won't let bidders be
25 mischievous, in other words. And I think -- as reflected on

1 how I wanted to distinguish bidders from DIP lenders in the
2 discussion on the protective order. I mean, I think it's
3 largely been avoided here.

4 There's been a lot of rhetoric in the Chrysler case
5 about this isn't fair, this isn't fair, etcetera. It seems to
6 me there's ultimately a significant economic decision that the
7 parties have to make here, which is, you know, is it worth
8 going along with what's being proposed. And it's easier to
9 make that decision if you're reasonably comfortable that there
10 has been, now that is has been proposed, an opportunity to beat
11 it. And I'm just not sure, absent putting in a structure that
12 lays out how you can beat it, that people will be comfortable
13 on that point. And I don't know, particularly when the
14 timeline is the same timeline.

15 I don't view it as a process designed to show who can
16 hurt the debtors more. I mean, that's not a winning bid, who
17 can hurt the debtors more. It's a process to show who can help
18 the debtors more as a going concern. The alternatives are -- I
19 mean, we don't have to worry about the alternatives. Everyone
20 knows what the alternative is, and that can be implemented.

21 MR. BUTLER: Right. We all understand the
22 alternative is --

23 THE COURT: Right.

24 MR. BUTLER: -- that the DIP lenders take the assets.

25 THE COURT: So I --

1 MR. BUTLER: So the question is --

2 THE COURT: Whatever that means. So again, what I'm
3 focusing on is the process where people do something more than
4 just take the assets. And I, frankly, view the Platinum bid as
5 that type of bid. People are doing something more than just
6 taking the assets. And as I said, I wouldn't want to embark on
7 that process unless the rules were clear that if you're going
8 to be bidding to do something more than just taking the assets,
9 then whoever wins wins.

10 MR. BUTLER: But Your Honor, that's the problem. The
11 process -- just to say it, the process that we proposed is a
12 process that recognizes the realities of this case. It's a
13 private sale process which means that anybody can come at the
14 July 23rd hearing, and between now and then they can make an
15 offer, they can get information. If they're unhappy with what
16 occurs, and there's a party in standing that wants to take up
17 that cause, like the DIP lenders, we'll be before you on the
18 23rd, and our position --

19 THE COURT: I'd rather avoid that and just have it be
20 clear that they can come in and get the information and bid,
21 make a bid.

22 MR. BUTLER: Right, but --

23 THE COURT: Well, I mean, what's the difference?

24 MR. BUTLER: It's not clear to me, Your Honor, how
25 that process works -- and I know how to do 363 processes -- and

1 what's really being sought by the DIP lenders here. I think
2 the DIP lenders are seeking to merge the DIP lender and acquire
3 provisions of your protective order.

4 THE COURT: Well --

5 MR. BUTLER: And I think they're -- you know, and the
6 reality is that I think they're looking to give information
7 that's been given to the DIP lenders to third parties. I think
8 they're looking to give the architecture --

9 THE COURT: But most of that information would be
10 available to third parties anyway under a confidentiality
11 agreement, almost all of it.

12 MR. BUTLER: Well, for example, the ancillary
13 agreem -- some of the things we've been asked to give the DIP
14 lenders, Your Honor, and we've agreed to under the protective
15 order, would not be made available. The ancillary agreements
16 between GM and Platinum would not be made available, for
17 example. You know, to understand what those private agreements
18 are is not something a bidder gets to sort out ahead of time.
19 You know, that's proprietary information. They don't get --
20 and Your Honor's made this point to us before -- they don't get
21 the proprietary agreements that made up the essence of this
22 transaction and all the work that's gone into it by the parties
23 and then get to take those and try and rip them apart.

24 THE COURT: Well, let's explore that a bit. All
25 right? I'm not so sure that's right. And frankly, under 2004,

1 given what this plan says is going to the creditors, why
2 wouldn't you have a right to get that under 2004? I understand
3 how Platinum is evaluating the deal would not go to a buyer.
4 But if you're telling people to vote on a plan premised upon a
5 Class C interest, and you're telling your DIP lenders to agree
6 to a deal based on a Class C interest, and they cannot tell,
7 not how Platinum values the Class C interest, but what the
8 agreements are that supports that Class C interests, it's a
9 complete leap in the dark. I mean, you might as well be
10 telling them nothing. It's actually misinformation because you
11 don't know what it is. You're suggesting there's something
12 there. As far as unsecured creditors are concerned -- because
13 I understand you shared a lot of this information with the DIP
14 lenders --

15 MR. BUTLER: Right.

16 THE COURT: -- but as far as unsecured creditors are
17 concerned, Platinum could have an agreement with GM that says
18 you know, as an economic matter, as a practical matter we get
19 everything. And so this is illusory. It seems to me if
20 Platinum wants people to accept this deal -- of course I would
21 never expect them to say how they value it, but they have to
22 see what the agreements are.

23 MR. BUTLER: Your Honor, I would --

24 THE COURT: And I don't see how sharing the
25 agreements with another bidder, even, would kill the

1 agreements. They're still agreements. The other bidder could
2 only say, you know, U.S. Treasury, you can get more out of my
3 deal. And then they'd have to evaluate whether for some other
4 reason, I'm not quite sure what it would be, but for some other
5 reason we don't want more money. That would be a pretty
6 difficult decision to make for the U.S. Treasury, I would
7 think. And so I mean, again, how one buyer evaluates a deal is
8 proprietary, but what that deal is, particularly when elements
9 of that deal are being touted as -- you know, the upside of
10 that deal is being touted as something that creditors should
11 want, when you can't tell what it is you're getting, I have a
12 problem with that.

13 And you know, there are cases in this district,
14 there's an excellent one by Judge Bernstein that says that if
15 DIP lenders sit on their rights and the plan proposes to pay
16 them less than 100 cents, well, you know, that's it, too bad.
17 So in a way, this disclosure is an issue for them too. I don't
18 know. I think that --

19 MR. BUTLER: Your Honor, the only way I can respond
20 to you is as follows. I don't know, and I'll have to inquire,
21 but I don't know whether General Motors and Platinum are
22 prepared to disclose proprietary agreements between them in a
23 public way.

24 THE COURT: No, I'm not saying -- if you were a buyer
25 you would have to sign a confidentiality agreement.

1 MR. BUTLER: I just misunderstood you. I thought you
2 just talked about saying it's got to be in the disclosure
3 agreement so everybody knows.

4 THE COURT: I think --

5 MR. BUTLER: You know --

6 THE COURT: -- I mean, it seems to me that --

7 MR. BUTLER: Because --

8 THE COURT: -- there needs to be some way for the
9 people who are voting on the plan to understand from some
10 source, maybe filtered through a review by a committee,
11 something about what the economics are because if you read the
12 disclosure statement you have no idea. I mean, there's this
13 Class C interest and there it is. And you read the agreement
14 and --

15 MR. BUTLER: It is the hope certificate that it was
16 intended to be. Let me just say to Your Honor --

17 THE COURT: But it's not necessarily -- but it isn't
18 like a warrant because you don't have the information to value
19 the warrant. You couldn't do -- I don't think you could do any
20 sort of warrant analysis on this.

21 MR. BUTLER: Your Honor, my response to you is to
22 simply say that the creditors' committee may get what it
23 ultimately is seeking here and that is no plan at all.
24 Because, ultimately, here the proponents of the plan process
25 and trying to put this into a plan, trying to make sure that

1 the administrative expenses in this case that are operating
2 liabilities were address, trying to address that is something
3 the debtor's been worked on very hard. We've convinced General
4 Motors, we've convinced Platinum that that was the way to go as
5 opposed to simply saying sell it to me under 363 and then my
6 agreement's between me and -- they're just our business and
7 nobody else's.

8 And I'm just saying to you -- I'm just pointing out,
9 Your Honor --

10 THE COURT: There are two different disclosure
11 issues. There's the ability to let a bidder, who signed a
12 confidentiality agreement, know what it's bidding against. And
13 then there's the disclosure to those who are being asked to
14 vote on a plan or agree to a transaction. The latter group,
15 you can have confidentiality agreements with or protective
16 order with and you go have that with the DIP lenders.

17 As far as voting on a plan is concerned, it's a
18 difficult issue to grapple with. I don't know whether your
19 disclosure statement does it at this point. Unless it
20 basically says there's absolutely no assurance you'll get
21 anything at all because we are not privy to tell you that
22 there's anything there because we don't know.

23 MR. BUTLER: I believe it actually does say that.

24 THE COURT: Well --

25 MR. BUTLER: It's the risk factor. Look, the goal

1 here --

2 THE COURT: The risk factor is one thing but I view
3 these things, generally, and I think I've told you this before
4 through the prism of my mother who's a smart person but not a
5 financial expert and I know she would be confused by it. I'm
6 confused by it. I don't know what -- I think it's not just a
7 risk factor. I think it's basically we can't tell you what
8 we're getting because it doesn't say what you're getting.

9 Now maybe there's a way to summarize that, I'm
10 assuming there is, frankly. There must be a way to summarize
11 that without disclosing the detail of the agreements.
12 Mr. Tanenbaum said it, there's a fundamental premise here that
13 the relationship between GM and the successor entity will
14 continue in a way that assures GM production.

15 Now, if there's some monetary parameters around that,
16 I think that that's worth summarizing without saying all the
17 details of that relationship.

18 MR. BUTLER: But the reality is, Your Honor, that as
19 it goes to the creditors' committee, and I understand
20 Mr. Rosenberg's objection about it, but the fact is the deal on
21 the table is that 7.2 billion dollars of distributions have to
22 go out under the waterfall before they get anything, that's
23 pretty clear. And I think the supplement says that clearly.
24 And it makes no representation that there will ever be 7.2
25 billion dollars worth of proceeds. But it creates the

1 opportunity for there to be. And if we go to sale route
2 there'll be no opportunity.

3 THE COURT: I don't know. How does the applicable
4 transfer agreement change all that, since that's the qualifier
5 for every obligation by the purchasers here?

6 MR. BUTLER: I'm sorry?

7 THE COURT: Under the NDA, article two, the purchase
8 and sale provision --

9 MR. BUTLER: Right.

10 THE COURT: -- it says, "Upon the terms and subject
11 to conditions set forth in this agreement," and then it says,
12 "As modified or supplemented by any applicable transfer
13 agreement," what's that? I'm assuming a transfer agreement
14 deals specifically with the relationship with GM, right?

15 MR. BUTLER: Among other things, yes.

16 THE COURT: So, where's that agreement?

17 MR. BUTLER: I believe that the -- some of the
18 agreements are scheduled -- on the schedules and exhibits, Your
19 Honor.

20 THE COURT: Does that affect the 7.2?

21 MR. BUTLER: I'd have to check, Your Honor. I want
22 to make sure I get the right defined term here.

23 THE COURT: Okay.

24 MR. BUTLER: Just one moment, Your Honor, there's
25 many agreements.

1 THE COURT: Okay.

2 (Pause)

3 MR. BUTLER: I thought that was the case. The
4 transfer agreements, Your Honor, are just the local agreements
5 and local jurisdictions pursuant to which we transfer assets.
6 And I don't think those are a major issue but I wanted to make
7 sure I have the right definition.

8 THE COURT: It's my fault; we've been, for the last
9 ten minutes, kind of, mixing apples and oranges. There are the
10 disclosure statement issues that I'm afraid we're going to have
11 to get to. But before we get to those, and you haven't even
12 gotten to those, we got off track because of my questions,
13 there's the issue about this sale process and what gets
14 disclosed to other good faith bidders. And again, you can
15 control who a good faith bidder is, everyone's advisor knows
16 how to deal with that.

17 But if someone is wanting information as a bidder to
18 own these assets in a way that is not destructive, it would
19 seem to me that they would need to know what they're bidding
20 against and it would seem to me that the government would want
21 to know that. Just to get -- it would make it hard for me if I
22 were a loan officer or what the equivalent is at a hedge fund,
23 I don't know what they call them at a hedge fund but the
24 equivalent of a loan officer, to say to my boss well let's go
25 along with this transaction because the boss is going to say

1 well what is it. And maybe they'll know that from --

2 MR. BUTLER: The DIP lenders will know that.

3 THE COURT: -- what you've disclosed. And then
4 you'll say, well was there -- what about doing better then
5 that. And well, we couldn't disclose the terms of it to any
6 other bidder, if that were the response, I'd kind of be hanging
7 my head at that point wanting to go out and get a drink. It
8 doesn't --

9 MR. BUTLER: Your Honor, but therein lies the -- any
10 one of those ninety or 150 lenders disclosing the information
11 or having someone contact the company and seek to obtain
12 information.

13 THE COURT: No, no.

14 MR. BUTLER: Because that's part of what we're
15 talking about here.

16 THE COURT: But again, I got the impression from what
17 you said that if a prospective buyer, Mr. X, who's done
18 business -- who's rescued business in the past and made deals
19 with unions, showed up and said I'd like to team up with
20 Elliott Associates but I want to know what I'm putting my money
21 into, I got the impression that you were saying to me that you
22 would not be able to give to them the agreements between GM and
23 Platinum that in this NDA it is a rep and warranty that there
24 are no other agreements then what the company has.

25 MR. BUTLER: No, what we would do, Your Honor, and by

1 the way we've not turned away any such bidder ever in the three
2 and a half years of this case.

3 THE COURT: I understand that.

4 MR. BUTLER: And have signed up dozens.

5 THE COURT: The records very clear with that. That's
6 not an issue. But I'm just focusing on the next three weeks.

7 MR. BUTLER: All right. So let's say someone -- I've
8 already made it clear in this record, if someone were to
9 contact us and they're a bona fide purchaser, they would in
10 fact get access to the data room as we've given access to so
11 many other people.

12 THE COURT: All right.

13 MR. BUTLER: When it came to the GM agreements, we
14 would send them to GM. We would say, part of your job, if you
15 want this transaction, is you've got to go and negotiate with
16 GM, those are not Delphi documents. Those are not Delphi
17 agreements. If you want a supply agreement with GM, you need
18 to engage them. That's what everybody's done in this process
19 up to date. And you've seen in all of the sales we've done in
20 this case we've divested assets. Your Honor is aware that in
21 every single instance people had to go out and negotiate
22 separately those agreements with general motors. We haven't
23 brought those agreements into this court. Delphi hasn't been
24 running those agreements; those are third party agreements
25 between those folks and General Motors.

1 And so what we would say if someone came to Elliott
2 and said we're a bona fide PE firm and we're working with you
3 or we're going to be the operators and we gave them access to
4 the data room. We would, as it relates to GM matters, we would
5 turn them over to GM and that's the process. I think it's not
6 for me to negotiate or for me to disclose. It's for GM to
7 decide, is this someone I want to do business and under what
8 terms will I do business with them, I think.

9 MR. BERNSTEIN: Your Honor, if I might. One of the
10 difficulties here is that the way this process has evolved, as
11 Mr. Butler has described it, one of the buyers is in the
12 position of qualifying other bidders here. So if General
13 Motors doesn't want to talk to someone and reveal to them what
14 their deal with Platinum is so that that party can determine
15 whether they can offer a better deal to General Motors, General
16 Motors shuts down the process.

17 And what we are asking here, Your Honor, is for this
18 to be a competitive situation and the competition from the
19 point of view of many of these bidders is with Platinum. They
20 have to know what Platinum is offering General Motors so they
21 can compete because the debtor and the process has been set up
22 so that one of the buyers, General Motors, is qualifying the
23 bidders.

24 MR. BUTLER: Your Honor, and that's why -- I'll say
25 it again and obviously the Court will direct us what to do and

1 we will do it faithfully, but that's why we called this a
2 private sale transaction.

3 What the reality that everyone apparently wants to
4 ignore in this room is that General Motors is proposing to put
5 in upwards of four billion dollars into this transaction, much
6 of it coming from the support they're getting from the U.S.
7 Treasury based on judgments they're making in their case for
8 protection and supply, without which this company would be in
9 liquidation.

10 And what I kind of hear Mr. Bernstein saying is, we
11 ought to set it up a way so GM doesn't have any choice.

12 MR. BERNSTEIN: No, not saying --

13 MR. BUTLER: And GM doesn't get that. We can't force
14 them.

15 THE COURT: No, it's just information, that's all.

16 MR. BUTLER: No, he said set up a process so that
17 GM -- how do you take GM out of the process?

18 THE COURT: No, you can't take GM out of the process
19 but it's information. That's all we're talking about.

20 MR. BUTLER: I didn't say that I was asking GM's
21 permission to give them information. I'm not asking them. I
22 didn't say anything about that.

23 THE COURT: No, but it seems to me it's the key piece
24 of information.

25 MR. BUTLER: I am saying that GM has to decide, I

1 think, whether GM -- what supply agreement GM wants to give
2 that bidder, I think. Maybe I'm wrong. Maybe we can tell GM
3 what supply agreement they should enter into. But GM has not
4 said to us, because we've asked the question, is this supply
5 agreement you've entered into available to anybody who walks
6 down the street?

7 THE COURT: No, of course not.

8 MR. BUTLER: And they've said no.

9 THE COURT: But Mr. X doesn't even know whether it's
10 worth pursuing unless he's read it. Of course Mr. X has to
11 satisfy GM or Mrs. X has to satisfy GM if it's their desire to
12 buy this company and run it as a going concern. Of course they
13 have to do that.

14 MR. BUTLER: But assuming the debtors give all of the
15 information in our data room to somebody who's coming up, the
16 same information we gave to Platinum.

17 THE COURT: But that's a room. You have these
18 contracts.

19 MR. BUTLER: Right.

20 THE COURT: They're disclosed. There's a rep in the
21 NDA that said there are no other contracts between GM and
22 Platinum.

23 MR. BUTLER: We're actually filing them with the
24 Court --

25 THE COURT: So you have them.

1 MR. BUTLER: -- on a highly confidential basis.

2 THE COURT: Right. I mean it's -- just because
3 someone hasn't put them in the data room the debtors still have
4 the information. Just the existence of the agreements itself
5 doesn't seem to me to be proprietary information. If there's
6 sensitive information about GM or Platinum, there's ways to
7 deal with a buyer, A, who decided the prospective buyer is in
8 good faith. B, that includes the assets and you have a non-
9 disclosure agreement. But to just preclude -- to say that the
10 very existence of the agreement is not disclosable, to me is --

11 MR. BUTLER: No, the existence of the agreements has
12 been disclosed. The question is -- and look --

13 THE COURT: Well, no because you don't -- there could
14 be one, two, three; you really don't know whether they exist.
15 I really appreciate what the debtors are doing; you're trying
16 to have a transaction here. You're trying to do it through a
17 plan and you're thinking of the down side, which is the
18 fallback on a sale transaction, that's all prudent, that's all
19 good. And you're trying to persuade people not to exercise the
20 rights they have to short circuit that process.

21 But I still come back to how does it hurt the
22 debtors, on the same timeline that you're on, to have what I
23 would view as a normal opportunity for someone to come in. I
24 don't see how it hurts. And to my mind, that's what needs to
25 be shown before a debtor really embarks on a private sale

1 process.

2 MR. BUTLER: Your Honor, we need to move forward
3 today so we need to do whatever -- we need to move forward in
4 the process Your Honor's prepared to approve and that General
5 Motors, in particular, is prepared to fund seeing as they're
6 the funders here. And the -- nobody else.

7 I'm not quite sure, frankly, in the context of this
8 case, I admit and I'm not easily mystified, I don't know what a
9 normal process is over the next five weeks in this case because
10 I don't understand how, and I'm just saying it so that we
11 don't -- I can foresee we're going to have these arguments in
12 five weeks looking back and all the complaints about it. And I
13 can see right now, and that's why I'm saying it so that at
14 least I can say it on this record so I can point back, Your
15 Honor, and say I did not want the Court misled.

16 THE COURT: Well, what is it --

17 MR. BUTLER: But the fact is --

18 THE COURT: Mr. Bernstein and Mr. Abrams and
19 Mr. Rosenberg, what is it exactly that you're proposing?

20 MR. BERNSTEIN: Simply, Your Honor, at this point
21 understanding the transaction in its full extent between
22 Platinum, GM, and the company --

23 THE COURT: Well --

24 MR. BERNSTEIN: -- so that people can understand
25 whether they can compete against that transaction and how.

1 THE COURT: And then let's break that down because
2 the agent understands that transaction but you --

3 MR. BERNSTEIN: The agent does not have the equity
4 splits between Platinum and General Motors so it's unable to
5 say whether it's willing to offer a better deal than Platinum's
6 willing to offer. And that's true of the steering committee
7 and it's true of the other parties here.

8 We can make guesses, we're trying to make guesses
9 from the tea leaves that we've got but we don't understand
10 that. And that is fundamentally what people need to understand
11 if they're going to make a proposal that competes with
12 Platinum's offer.

13 THE COURT: Well, you're saying to me even as the
14 agent you don't know what makes up the Class C interest?

15 MR. BERNSTEIN: Yeah. Your Honor, we have been given
16 information about the returns that our piece of paper would get
17 but not the returns between the other two parties as
18 distributions come out to us. And so it's really the returns
19 between the other two parties that are relevant because it is
20 Platinum's offer to General Motors and this company that is
21 really being competed against here. And if we don't understand
22 what they're offering and what they're keeping, it's impossible
23 to compete against that transaction.

24 THE COURT: As a bidder.

25 MR. BERNSTIEN: As a bidder. Including as a credit

1 bidder, Your Honor.

2 THE COURT: I would think as a DIP lender you
3 wouldn't need to know because you only know what's coming to
4 you.

5 MR. BERNSTEIN: Yeah, I mean it affects our recovery
6 and the debtor has very cautiously tried to suggest to us how
7 our recovery is affected.

8 But you see, we have two choices here Your Honor.
9 There's a choice of approaching General Motors and the company
10 with an alternative to the Platinum transaction. Or there is a
11 choice of looking at these assets as two pools of assets, those
12 that are being purchased in the Platinum bid and those that are
13 being purchased directly by General Motors and focusing just on
14 a credit bid, frankly, for the assets that are being purchased
15 in the Platinum transaction. And that credit bid might not
16 involve the rest of the assets and the rest of the assets could
17 then be sold to General Motors.

18 We don't understand enough to understand how to
19 structure that transaction, how it would compare to the
20 Platinum transaction, whether there's a better three-way
21 transaction between Delphi and a DIP lender group of investors
22 and General Motors. And as we go on here time is running and
23 this is not simple, as you have pointed out and as the debtor
24 has pointed out. And so if there were access to information,
25 people could actually formulate a view and we could see whether

1 it was for real that there might actually be alternative
2 transactions here. If there aren't, we should know that by
3 mid-July and we know where we are. But we really should give a
4 fair chance here to see whether there are alternative
5 transactions that might make everybody better off.

6 MR. BUTLER: Well, Mr. Bernstein just said two
7 things. One is alternative to Platinum and whether we use the
8 company's procedures or some other procedures Your Honor
9 imposes. We have indicated that the company is going to
10 provide information to unsolicited parties with respect to
11 alternative transactions. And so, that issue, I think, we can
12 do it whether by the company's proposed process or your own,
13 Judge, your own process.

14 The other -- what's going on here, and I haven't had
15 a chance to talk to Mr. Bernstein's comments is Mr. Bernstein
16 and the DIP lenders would almost like a declaratory ruling from
17 Your Honor on how 363(k) works in the context of this
18 transaction. And they would like to be able to split the NDA
19 into two different deals and somehow credit bid for part of the
20 assets. I want to reserve all of our rights with respect to
21 that because it's not clear that they can do any of that.

22 THE COURT: That's fine. I don't think he was asking
23 for that.

24 MR. BUTLER: He said --

25 THE COURT: I think what he was explaining is that,

1 as he said in his opening remarks, there is a risk here that
2 the DIP lenders will exercise their remedies. There is an
3 alternative -- there are many alternatives to that course and
4 one of them is for them to get satisfied that, conceivably,
5 they can exercise on a consensual basis some of their remedies
6 and GM would be happy to. That's a possibility, right? Is
7 that what you were getting at?

8 MR. BERNSTEIN: That's what I was saying, Your Honor.

9 THE COURT: Not on a forced basis.

10 MR. BERNSTEIN: Well, that's our preference for it
11 not to be on a forced basis but the way -- if we can't -- if we
12 don't have the information necessary to try to make a bid
13 that's competitive with the Platinum bid; it leaves us with few
14 alternatives. And as I said before, Your Honor, the agent may
15 get that instruction and it may target just certain assets, it
16 may not target all of the assets of this company. And in fact
17 that's -- but that is not the desirable outcome. The desirable
18 outcome is for there to be a consensual transaction here, it
19 could be a four-way transaction, it might involve Platinum.
20 But we're not even being given the opportunity to formulate
21 anything.

22 MR. BUTLER: Your Honor, actually I think they are
23 but I just don't think -- as it relates to the DIP lenders I
24 just don't think that is at all accurate. What they --

25 THE COURT: Well, if they don't know what Platinum's

1 getting out of the deal I think it's pretty accurate.

2 MR. BUTLER: No, Your Honor. What they're wanting to
3 do is not do a transaction that's alternative to GM and
4 Platinum, to the master disposition agreement. What they're
5 trying to do is invade the agreement and take Platinum's place,
6 one of the parties to that agreement, as opposed to an
7 alternative. None of them are suggesting --

8 THE COURT: But it's all -- but it would all be
9 consensual, that's the key thing. You all have a nice
10 potential standoff here and that's been evident to me for the
11 last three months. And at some point that issue will be
12 resolved, I'm assuming consensually. But it seems to me that,
13 and I don't fault Platinum for this but it seems to me that at
14 this point one party of the standoff is trying to throw sand in
15 the other party's eyes. And I don't -- why do that? I don't
16 see any merit to it. I don't see how it hurts not to have them
17 be well informed, unless I'm missing something. Unless you
18 think that they're going to be destroying the company somehow.

19 MR. BUTLER: It's not clear to me that if you have a
20 group of people buying assets under an agreement that
21 competitors get to understand the splits between those parties.

22 THE COURT: I agree. But if you want them to say
23 yes, it seems to me -- frankly, I don't say yes unless I
24 understand, it's that simple. Unless I understand, I don't say
25 yes. And clearly, under 1125, people don't vote unless they

1 have adequate information. And I learned more about Platinum
2 today then -- I mean, I didn't learn anything about Platinum in
3 the disclosure statement, absolutely nothing. I didn't know
4 that Platinum had done any work. I didn't know what Platinum's
5 relationship -- I still don't know actually what Platinum's
6 relationship with GM is. I don't know how Platinum's continued
7 role here, since GM is getting these four or five plants
8 outright, what Platinum's role is for them. It's a black box.
9 And frankly, it seems to me, if the lenders were really to be
10 destructive they would have proposed something quite different
11 from what they're proposing. And I have tried to be clear that
12 if they're to be given the option of something other than a
13 credit bid, which to my mind is -- on a nonconsensual basis a
14 credit bid is the same as pulling the plug in many respects.
15 But if they're to be given an option to do something other than
16 that, then it has to be something that they concede something
17 on too, which again is that it really will be an auction and
18 they'll be satisfied with the winning bidder, the ones who bid.
19 The ones who don't bid still have their rights but the ones who
20 bid --

21 Again, I appreciate what you're trying to do here but
22 I think under the constraints of both the practical issue,
23 which is you're trying to get consent from people, and the
24 legal issue which is, at least as far as the unsecureds are
25 concerned, you're trying to persuade them to vote. You've go

1 to give -- I think you've got to give more information.

2 And maybe GM wants to assert some confidentiality
3 right that they have in terms of giving you their contracts
4 under this agreement. To me 107 is designed for that but
5 that's offset by Rule 2004. And I think legitimate concerns
6 for confidentiality can be protected but I don't think you can
7 just, sort of, ram this through without either risking very
8 serious consequences of saying I'm not going to have my hand
9 forced, I'm not talking about me now I'm talking about a lender
10 saying I'm not going to have my hand forced by this. In fact,
11 I don't like it enough so I'll vote no and exercise remedies.
12 Or you'll have issues at the end of the day at the approval
13 hearing.

14 I don't think this process that the lenders and the
15 committee has proposed is particularly onerous.

16 MR. BUTLER: Could you say what the process is, Your
17 Honor, because it's not at all clear.

18 THE COURT: What I'm saying is that the debtor will
19 provide the relevant information to enable a prospective bidder
20 to evaluate the transaction and bid against it, subject to all
21 the constraints on finding that the bidder is a prospective
22 bidder in good faith and that they have the wherewithal to do
23 the transaction. And that they'll sign the customary
24 nondisclosure agreement. And I think that for a number of
25 reasons, including this agreement in the NDA, it should

1 probably be overseen by the committee, or at least its
2 professionals. And again, bidders are bidders, lenders are
3 lenders. They're kept separate as the protective order says.
4 And that if you're a lender and you're bidding and you're
5 bidding something other than just your claim, you really do
6 abide by the results of the auction one way or the other.

7 And in evaluating the bids, obviously one takes into
8 account all the things you do when you evaluate a bid. It's --
9 whether it can be the risks of not closing, the risks of
10 delivery on the value and the like. The destructive bid here
11 is going to be the foreclosure. It's not going to -- a credit
12 bid, to my mind, is the same thing as foreclosure unless it's
13 backed up by real focus on preserving the asset. And that
14 clearly is a consensual process that involves GM.

15 I think there's an unnecessary amount of suspicion
16 here. I think, as you've said, the debtor is trying to do the
17 right thing. Throughout this entire case GM has been trying to
18 do the right thing. And I don't want that to change now that
19 you're at the short strokes and you're about a month and a half
20 away from potentially ending the case.

21 MR. BUTLER: Your Honor, what does the Court have in
22 mind when you say oversight by the committee? What's the
23 committee supposed to be doing here?

24 THE COURT: Well, I imagine they can work very well
25 with whoever you have had in charge of the M&A transactions.

1 It really is oversight, not running the process but just making
2 sure it's fair.

3 MR. BUTLER: Are you talking about the advisors?

4 THE COURT: Yeah.

5 MR. BUTLER: Not the committee?

6 THE COURT: No, the committee's advisors.

7 MR. ABRAMS: Your Honor, if I could just speak on
8 behalf of the DIP lenders briefly. I think Your Honor's
9 message -- I think we all speak in a coordinated fashion. One,
10 we understand Your Honor's directive. Two, I think the notion
11 that the one statutory fiduciary with no skin in the game, in
12 particular Mr. Rosenberg and the committee's professionals
13 having oversight responsibility and the ability to report to
14 Your Honor with respect to the "fairness" issue --

15 THE COURT: Well, that's what oversight's about.

16 MR. ABRAMS: -- I think is absolutely appropriate. I
17 think perhaps, as well Your Honor, since we have to dialogue
18 and discuss a number of issues, off the record frankly for
19 efficiency sake; we would like Your Honor to consider a
20 periodic status conference among the parties in interest to
21 discuss where we are and whether any issues are in need of Your
22 Honor's consideration.

23 THE COURT: You know, I -- I don't want to have
24 creeping litigation. And Judge Morris is very good for you all
25 to focus any sort of settlement dialogue.

1 MR. ABRAMS: I was thinking more in terms of things
2 as fundamental as the form of an NDA and whether or not it
3 is --

4 THE COURT: The form of, I'm sorry:

5 MR. ABRAMS: No, the nondisclosure agreement.

6 THE COURT: I assume you all are capable of working
7 those things out. You all know if you can't that you'll get a
8 hearing on two hours notice or one hour notice on a Friday at 4
9 o'clock. But I don't want to encourage people to formalize
10 something more than I think you need to.

11 MR. ABRAMS: Now that we have Bob, Your Honor, I
12 think we'll be able to work our way through it.

13 THE COURT: Okay.

14 MR. BERNSTEIN: Your Honor, can I ask for one
15 clarification? One of the points that's been made is the, and
16 this is also true in the protective order that Your Honor
17 referred to, is the distinction between activities as a
18 creditor and activities as a bidder. Here the decision that
19 people are making is whether a transaction that potentially is
20 an investor transaction and a consensual transaction is
21 sufficiently attractive to cause them not to exercise remedies
22 as a creditor. And it becomes very difficult when you're
23 talking about a single individual who's making that decision to
24 have this kind of bifurcation that you're talking about. And
25 it's going to create enormous problems for the agent because

1 the agent won't know who they can tell what. Someone from
2 Elliott calls and then we have to start saying are you on the
3 creditor's side, are you on the investor's side. And then we
4 have to talk to the creditor's side about whether a transaction
5 that Elliott's proposing on the investor side is something
6 that's going to cause the creditor's side not to exercise
7 remedies, it becomes unworkable.

8 THE COURT: I don't know if it really is unworkable.
9 I mean, you certainly can have them identify who they are and
10 you can kick them out of the room when you're talking about it.

11 MR. BERNSTEIN: It is going to mean that all of that
12 wonderful information that Mr. Butler says that the creditors
13 have access to is going to be unavailable to the people at the
14 same institution who are acting on the investor's side.

15 THE COURT: No, they would get it as an investor.

16 MR. BERNSTEIN: But they're going to have to start
17 from scratch and we've only got for weeks here to get this
18 done.

19 MR. SIEGEL: Your Honor, you said earlier in the
20 discussion that you believe that it's unlikely that there's
21 information --

22 THE COURT: It's very little information we're
23 talking about that would be distinguished between the two, at
24 least that I'm talking about.

25 MR. SIEGEL: But Your Honor, it's --

1 THE COURT: That's all I --

2 MR. BERNSTEIN: I mean, are we just talking --

3 THE COURT: The distinction is really -- it appeared
4 to me, from the discussion over the protective order, that
5 because Platinum wanted to persuade the lender group that their
6 deal was good, that they were going to be giving the lenders
7 information about their own analysis of the deal. That type of
8 information, Platinum's own analysis of the deal, I don't think
9 a prospective buyer should have.

10 MR. BERNSTEIN: Right. But the --

11 THE COURT: I mean --

12 MR. BERNSTEIN: But if we're talking --

13 THE COURT: It seems to me you can kick someone out
14 of the room when that's coming. Or they can say that they're
15 not going to get that.

16 MR. SIEGEL: Your Honor --

17 THE COURT: Almost all the other -- I can't think of
18 any other information that a buyer would be precluded from
19 getting.

20 MR. BERNSTEIN: Let's just use some examples. We've
21 got the information about the equity splits. We got the
22 information about ongoing agreements between the Parnassus
23 entity, which is the buyer vehicle and General Motors. There
24 are bunches of pieces of information that any buyer and any
25 creditor is going to want to know if they're formulating either

1 a credit bid or a competing bid.

2 THE COURT: Again, it seemed to me there was only a
3 small category of information that wouldn't properly be
4 available to a buyer.

5 MR. BERNSTEIN: You're really talking about
6 Platinum's own financial analysis.

7 THE COURT: That's what I had in mind except for, I
8 do think, attention should be paid to qualifying a buyer to
9 make sure that they're not just trying to learn stuff.

10 MR. SIEGEL: But Your Honor, to the extent that we're
11 talking about that specific information, I think we're
12 comfortable saying that, for example, Elliott could be excluded
13 from that. However, what creates almost an insurmountable
14 obstacle for us is the idea that if we have the same set of
15 information, whether we're -- because we're acting as a credit
16 bidder ultimately we want to, for lack of a better word, figure
17 out how we're going to finance the business after we're done
18 doing the successful credit bid, we need to factor that into
19 the decision about --

20 THE COURT: But that's already excluded. The
21 debtor's already gave you that.

22 MR. BUTLER: It's already in the order.

23 MR. SIEGEL: But that's not fair because -- let me
24 explain what I mean.

25 THE COURT: Okay.

1 MR. SIEGEL: When we get drafts of NDAs there are
2 specific restrictions on how we can use the information that we
3 receive. And that's our problem.

4 MR. BUTLER: As a bidder.

5 THE COURT: But I think we just talked about the
6 bidder point. But if you're trying to evaluate how you finance
7 the deal after you foreclosed, hypothetically, the protective
8 order covers that.

9 MR. SIEGEL: Yes. But Your Honor, the problem is
10 that as things currently stand the same person can't make both
11 evaluations.

12 THE COURT: But what I'm saying is it seems to me
13 it's a very limited portion of information that the bidder
14 person doesn't get and frankly shouldn't want to get anyway.
15 And I'm not quite sure why a lender would want it, frankly.

16 MR. SIEGEL: I think we're agreeing on that point,
17 Your Honor, but the point is that there should be no reason for
18 different people at the same institution, so long as they don't
19 have that little piece of information --

20 THE COURT: Well, of course. But then you don't need
21 that screening procedure. I mean, I don't think you need to
22 spell that out other than to say there'd be an appropriate
23 screening procedure.

24 MR. BERNSTEIN: That's a clarification on the
25 protective order --

1 MR. SIEGEL: We appreciate that.

2 MR. BERNSTEIN: -- that we didn't understand that it
3 was limited to that limited type of information, Your Honor.
4 Thank you.

5 MR. SIEGEL: That helps.

6 THE COURT: It has to be a screening procedure that
7 screens. If you don't need to screen then you don't need to
8 screen.

9 MR. SIEGEL: Then that solves the problem. We had a
10 difference in interpretation of what that language meant.

11 THE COURT: But I think that, again, I want to be
12 clear about this, this is not an excuse for people to nose
13 around.

14 MR. SIEGEL: No. That's not what this is about.

15 THE COURT: Okay. All right.

16 MR. HARRIS: Your Honor, if I might actually answer
17 one of the questions you raised before to Mr. Butler about -- I
18 think your question was, please explain to me why the process
19 that's being suggested here is deleterious to Delphi and I'd
20 like to address, actually, that point.

21 THE COURT: Okay.

22 MR. HARRIS: My clients, and people can cast whatever
23 aspersions they want of them, actually have been out in the
24 marketplace with respect to dealing with prospective customers,
25 both here and abroad, understanding their views on Delphi and

1 what it is the company has been an extremist for a substantial
2 period of time, is getting a lifeline from GM today to give it
3 some additional ability. But like it or not, the announcement
4 of this transaction has actually created stability in the
5 marketplace with respect to its ongoing customer relationships.

6 And based upon that we weren't asked, we were told
7 when we signed our NDA there are no outs in this deal. There
8 is no more material adverse affect out. There are, like, maybe
9 three outs in the whole deal if certain things can't get done
10 which are instrumental to the transaction, including things
11 that have to happen in the GM bankruptcy case. To create a
12 process that is undefined and which the marketplace, outside of
13 this courtroom, may or may not understand about who the future
14 owner of this company is going to be and what they're going to
15 do.

16 THE COURT: I don't think it's undefined. It has to
17 be a better deal then you guys.

18 MR. HARRIS: I understand.

19 THE COURT: So you tell every supplier it's either me
20 or someone better. And I was probably flip about talking about
21 people in suits. Platinum may be the greatest thing since
22 sliced bread, probably is. But I don't -- I think that in my
23 view a process like this makes it more certain, rather than
24 less, that the right person or the right group ends up with
25 these assets.

1 MR. HARRIS: Your Honor, I'm not disagreeing with
2 you. What I'm suggesting to you is that if Your Honor believes
3 that a process such as what's being suggested by the creditors'
4 committee and the DIP lenders should be going forward, that it
5 needs to be a defined process with hard dates, hard auction
6 and --

7 THE COURT: I'm happy to --

8 MR. HARRIS: -- and not just submit your bid and show
9 up on the 23rd and see what happens. Because I think the
10 marketplace needs the information and the stability -0-

11 THE COURT: I agree with that.

12 MR. HARRIS: -- that a formal process would actually
13 put including, potentially, and I'm going to throw it out
14 there, the stalking horse protections for those of us who have
15 been in this process.

16 THE COURT: All right. That's fair. The timeline
17 that Mr. Abrams' pleading laid out seemed fairly reasonable to
18 me. I think the debtors and the committee should focus on
19 that, if there's something I've missed on that. But again,
20 this is not -- this is a timeline that accommodates the
21 timeline in the Platinum/GM deal. And that's about all I could
22 say about it. It is clear to me the debtors know how to run a
23 sale process; they do know how to do that. And I know that the
24 committee's advisors know how to do that. It's not --
25 unfortunately you're not writing on a blank slate by any means.

1 MR. BUTLER: Your Honor, I'm a little confused
2 about -- you said the timeline on pages 16 and 17 is a
3 litigation timeline. It says, "Commencement of document
4 discovery, completion of document discovery, depositions and
5 expert depositions".

6 THE COURT: No, but having an auction on the 20th.

7 MR. BUTLER: That's the only -- okay.

8 THE COURT: It seemed to me that you'd have to have
9 the bids in before the 15th because that's an important day for
10 the GM case.

11 MR. BUTLER: In before when, I'm sorry?

12 THE COURT: July 15th.

13 MR. BUTLER: The hearing's July 13th.

14 THE COURT: Well, that's before the 15th. I guess
15 you're right; it would have to be the 12th.

16 I think you all should sit down and work through
17 that. You're perfectly capable of doing it. I know you can do
18 it.

19 MR. ABRAMS: Just one point of clarification. It
20 went by fast but it struck me as worth noting. Mr. Harris made
21 reference to bid protections in a context where, as far as we
22 know, this deal was handed to us final on a silver platter and
23 I have no idea what kind of work they did or whether one can
24 now claim an entitlement to something when you didn't follow
25 the process the way it was designed to be followed from day

1 one.

2 But put that to the side, we'll talk about that but I
3 hope that doesn't become the gating issue to whether we
4 actually have cooperation here.

5 THE COURT: I think you should talk about it.

6 MR. BUTLER: Your Honor, I'm assuming that there
7 should be -- you've indicated in this court before what
8 customary bid protections are, I think we understand what they
9 are.

10 MR. SIEGEL: Your Honor, I have a suggestion to maybe
11 facilitate things. We now have a professional that's available
12 to us to try and facilitate the process. Could I suggest that
13 Mr. Rosenberg work with us to submit an order on what we have?

14 THE COURT: Well, no --

15 MR. BUTLER: Your Honor, the debtor's aren't
16 abdicating their role here to Mr. Siegel.

17 THE COURT: I think that Mr. Rosenberg and the
18 committee's financial advisor should sit down immediately with
19 the debtor's counsel and advisor and come up with something. I
20 don't think you'll be disappointed by it. And I'm sure they'll
21 circulate it to you all. Because again, part of this is not a
22 litigation process, part of this is to lay the groundwork to
23 make sure that people in this group of DIP lenders are
24 reasonably comfortable that even if they're not putting the
25 money in the value that's being provided here really is the

1 highest and best. And that's a process that I've encouraged
2 that the parties do, not only between themselves but going so
3 far as to have the mediation. So I think it's largely
4 consensual.

5 We've spent a fair amount of time, at this point on
6 what is clearly the most important issue, to my mind, here.
7 Can I give you my preliminary thoughts on the voting issues?

8 MR. BUTLER: Yes, Your Honor.

9 THE COURT: And that may help focus your arguments.

10 It seems to me, on the empty class issue, you should
11 put in the ballot and prominently in the disclosure statement,
12 in the executive summary part, that the debtors intend to
13 assert that if a class contains no votes that that is a vote in
14 favor of the plan. But that that issue, ultimately, will be
15 decided by the court. However, parties are encouraged to vote
16 because they may be waiving their rights if they don't.

17 It seems to me, based on my reading of Adelpia and
18 other cases that this issue is not clear cut. It may be
19 appropriate in certain situations, as it was in Adelpia where
20 it was a tiny class and you had a multi-debtor plan. And it
21 was being used as a tactic in a way that caused unnecessary
22 cost. But there may be situations where it's not appropriate
23 to assert it. And rather than prejudging that issue, I think
24 it's probably better to give people fair warning and encourage
25 them to vote and leave it for another day.

1 On the record date, given the time that's lapsed and
2 I'm assuming the substantial changing of hands of the claims, I
3 think there's a real issue as to whether you're really having
4 the same holders, the holders who 1127(d) is talking about
5 being deemed to have already voted. I think there's -- it's as
6 likely as good an interpretation that you have to look at the
7 current holders. And there may be lots and lots of current
8 holders who weren't holders back in 2008. So I think you,
9 unfortunately, I know there's a cost to it but I think you have
10 to set a new record date for the unsecureds.

11 MR. BUTLER: Your Honor, we intended to resolicit the
12 class in any event. So it's -- we came to the Court with what
13 the, I think, plain language of 1127 says. And I think it was
14 clear from our papers we're prepared to be guided by the Court
15 on what to do. And we proposed, I think, even in our papers
16 that if the Court were to determine that there was a basis to
17 read 1127 as to requiring a new record date, that we set it a
18 June 9th --

19 THE COURT: June 8th. It just seems to me knowing --
20 having dealt with this issue before, it's going to be very
21 hard, if you don't set a new date, for the title holders to
22 track people down at this point. And -- was there another
23 voting issue besides that at this point?

24 MR. BUTLER: None that we had, Your Honor.

25 MR. ROSENBERG: I think those are the voting issues,

1 Your Honor.

2 THE COURT: All right. On the disclosure statement,
3 I mean, no one has mentioned this. Obviously this is less than
4 twenty-five days but I do have the authority to shorten the
5 time for the approval of a disclosure statement.

6 I'm happy to go through with you questions I have on
7 this that I think you probably need to address. I think you
8 should come up with language first on this sale process and
9 dealing with Section 9.40.

10 By far, the most difficult thing to deal with is the
11 Class C interest. I think you can go one of two ways there, I
12 think you have to say either that it's a complete black box and
13 we can make no assurances about anything. Or you could say
14 based upon your review of the underlying agreements there's
15 some possibility of it being obtained. It's hard for me to
16 know because I don't really know how it actually works. I'm
17 assuming you have summarized this for the agent. As
18 Mr. Bernstein said, they don't have the splits as between GM
19 and Parnassus but you've given some indication to the agent, in
20 a fairly schematic form, about what the lenders might expect
21 from a Class C interest.

22 MR. BUTLER: Yes, Your Honor. In fact, Parnassus met
23 with some of the DIP lenders directly on that point.

24 THE COURT: Okay. So --

25 MR. BUTLER: But I would just indicate, Your Honor,

1 that there is some additional information that I think is going
2 to be forthcoming to the agent. Your Honor, the order was
3 entered yesterday, late afternoon, in preparing this hearing
4 but there will be more information forthcoming.

5 THE COURT: But what I'm saying is, it seems to me
6 that -- I don't know if you can provide an even more concise
7 summary of that for the disclosure statement. But if you're
8 not going to go the route of this is a complete black box then
9 I think that's where you need to go.

10 MR. BUTLER: Okay.

11 THE COURT: I found confusing, and again most people
12 just look at the chart, I found confusing the statement in the
13 chart that talks about defined benefit plans.

14 MR. BUTLER: Page number, please?

15 THE COURT: S(IX) that says "Upon consummation of the
16 modified plan, the remaining assets and liabilities of Delphi's
17 of hourly pension plan will no longer be the responsibility of
18 the debtors and will be addressed by GM." It's not clear to me
19 what that -- does that mean picked up by GM? Addressed is a
20 pretty affirmative word to me. It doesn't equal assume but it
21 does somehow suggest that there's responsibility there for it.

22 And then, of course right after that, it talks about
23 the salaried pension being involuntarily terminated and that
24 there'll be a negotiated settlement including an allowed
25 unsecured prepetition claim. That's clear, I don't have a

1 problem with that, it's the first part.

2 MR. BUTLER: The word address, Your Honor, is the
3 word that the Treasury and GM have given us.

4 THE COURT: All right.

5 MR. BUTLER: And so I don't have any other word to
6 describe it unless I'm given another word. I'm being very
7 candid with the Court.

8 THE COURT: Well, I guess you could say we don't know
9 what this means. I think you need to say something like this
10 is what we've been told by GM and the Treasury.

11 MR. BUTLER: Okay.

12 THE COURT: We don't know more than that.

13 MR. BUTLER: Okay.

14 THE COURT: We've talked about the Class C, which is
15 on the next page, S-X it's referred to. I think when you say
16 unsecured creditors, I think Mr. Fox made this point, I think
17 when you say pro rata share you need to say with the PBGC.

18 MR. BUTLER: Okay.

19 THE COURT: The cash payment, this is now S-XX, the
20 cash payment of thirty million to the PBGC, it's not clear
21 where that's coming from. Is that coming from the deal?

22 MR. BUTLER: The settlement agreement is supposed to
23 indicate that, Your Honor.

24 THE COURT: All right.

25 MR. BUTLER: Which is supposed to be filed by the

1 exhibit filing date.

2 THE COURT: Okay. Well maybe you should say from a
3 source to be subsequently disclosed.

4 THE COURT: On page S-XXIV, the third paragraph on
5 the bottom. The last line says, "Distributions to the general
6 unsecured creditors and the PBGC are in satisfaction of GM's
7 obligations under Section 4.04 of the amended GSA". Is this
8 referring to the settlement, the carve-out that was negotiated
9 a few months ago?

10 MR. BUTLER: Yes, because that carve-out -- just to
11 be clear, the carve-out was pursuant to an administrative claim
12 that's being waived --

13 THE COURT: Right.

14 MR. BUTLER: -- in its entirety.

15 THE COURT: I think you should spell that out a
16 little more.

17 MR. BUTLER: Okay.

18 THE COURT: Because that was an important point for
19 the committee and for the unsecureds. If you want you can say
20 something to the effect that if your belief that if GM wouldn't
21 recover anything on its administrative claim anyway so the
22 carve-out's meaningless. I don't know if that's what you
23 believe or not but if you want to put some value on it and say
24 that this is a fair settlement it would make it more effective
25 as a settlement in a plan because people would have notice of

1 what the settlement's about.

2 MR. BUTLER: But the point is on the plan GM waived
3 the claims so there's no recovery, just to be clear.

4 THE COURT: I understand but what's happening --
5 that's why I said what I said about the analysis of it. If
6 they didn't waive the claim an unsecured creditor might think
7 well, I might do better with them not waiving the claim because
8 I get up to 300 million dollars from it. Maybe the debtors
9 have analyzed that and said well if they didn't waive the claim
10 you wouldn't get anything because they wouldn't get anything.
11 I'm just throwing that out; I don't know if that's true. I
12 don't know if that is the debtor's analysis of it. But you see
13 what I'm saying? In terms of analyzing --

14 MR. BUTLER: I don't know that we've done an analysis
15 of alternative deals and transactions in that respect.

16 THE COURT: Okay. Well, but I'm assuming that when
17 it says it's in -- okay. I guess what I'm asking you to say is
18 what is the basis for saying it's in satisfaction? If you want
19 this to be -- to have some meaning at the confirmation hearing,
20 in terms of this plan satisfies this as a settlement or as --

21 MR. BUTLER: It may very well be that that word
22 satisfied has to come out.

23 THE COURT: Okay. It wasn't clear to me, from the
24 NDA, and therefore it's not clear to me on page S-XXVI, that
25 other than administrative claims that are paid in the ordinary

1 course, and the debtors have been very clear that they're
2 continuing to pay administrative claims in the ordinary course.
3 I'm assuming that that's one of the reasons that Mr. Mears
4 withdrew his client's objection. What other administrative
5 claims are being paid and what other administrative claims are
6 not being paid? From the NDA you get the impression that some
7 are being paid and some aren't.

8 And S-XXVI says "Estimated amount of claims to be
9 paid on the effective date," it doesn't say estimated allowed
10 amount of claims. So it's not clear to me whether this is a
11 smaller universe than the allowed --

12 MR. BUTLER: This is a much smaller universe.

13 THE COURT: Okay. So maybe you should put that in.

14 MR. BUTLER: The amount to be paid on the effective
15 date is a fraction of the administrative claims.

16 THE COURT: So you should probably make that clear.
17 And this is separate and apart from the DIP claims, obviously,
18 because that's dealt with elsewhere.

19 I think you need to say something -- I know you have
20 a risk section but on S-XLVII, which is the carryover
21 description of administrative claims, unless you do cover it
22 more in the risk section or have a cross reference to the risk
23 section there's the implication here that there will either be
24 an agreement to this payment of the DIP amount or it will be
25 paid as determined by the Court. There is an alternative here

1 which is that the Court will say, no you can't do it this way.
2 And I think you need to highlight the DIP lenders position on
3 this point, which is that you can't sell free and clear and
4 happen to be paid less than full. You could say that's their
5 position.

6 You've not set this up in a way, and I've drawn a
7 blank on Judge Bernstein's case, that would basically say to
8 the admin creditors you're getting this unless you object. I
9 think you could do that under the case law in this district but
10 you haven't done that. So I think you need to highlight that
11 there is this open issue.

12 Since the fundamental issue here is tied into the
13 NDA, I think that it would be helpful to a voting creditor to
14 have some more information about Parnassus and Platinum,
15 including what Mr. Harris told us today, which is that they've
16 spent a lot of time on this deal and they intend to continue
17 this business as a going concern. And also, I didn't see the
18 equity backstop by Platinum. I think we need to have some
19 assurance that there really is a real company as opposed to an
20 acquisition vehicle.

21 MR. BUTLER: Yeah. It exists.

22 THE COURT: I did have this question, which appears
23 in the key section of the NDA, the purchase and sale agreement.
24 In every context there's this phrase, as modified or
25 supplemented by any applicable transfer agreement. I think you

1 should clarify whether those are viewed to provide material
2 modifications that would go to the consideration that creditors
3 are supposed to receive here.

4 And on 25 there's this issue about the right to
5 settle but --

6 MR. BUTLER: I'm sorry?

7 THE COURT: On page 25 of the NDA it wasn't clear to
8 me who had the right to settle a litigation. And I think there
9 probably should be something in there, not for the benefit of
10 the defendants in Delphi vs. Appaloosa but for voters as to --
11 that the parties intend that litigation would be pursued
12 vigorously or funded appropriately or something like that.

13 The excluded facilities, is that something that's
14 still to be decided?

15 MR. BUTLER: No, Your Honor.

16 THE COURT: Okay. So maybe that --

17 MR. BUTLER: That's on a schedule, I believe.

18 THE COURT: Okay.

19 MR. BUTLER: And that's what stays in the DPH
20 Holdings.

21 THE COURT: Okay. All right. This wasn't -- on page
22 36, 2.7 deals with -- it's headed allocation among buyers. And
23 it says, "To the extent it is unclear whether a particular
24 asset or liability should be considered a GM acquired asset or
25 a company acquired asset, i.e. a Parnassus asset, where GM

1 assumed liability or a company assumed liability as the case
2 may be. Such allocation the parties will work together in good
3 faith to reasonably allocate."

4 It's not clear to me whether that means GM and
5 Parnassus or GM, Delphi and Parnassus. Although later on it
6 does refer to something being mutually agreed upon between
7 company buyers and GM buyers. And again, if you're going to
8 have a carried interest in the Parnassus piece of this, I think
9 that you need to know who's doing this allocation. And
10 obviously if it's -- it would seem to me that the debtor should
11 be involved in it to make sure that it really is a fair
12 allocation.

13 9.2.3 on page 64, this -- maybe I'm just reading this
14 wrong but it refers to what happens in the alternative 363
15 sale. And then it says, "Provided, however, that the amounts
16 payable under Section 2.3.3 of this agreement shall not be
17 included in the consideration."

18 MR. BUTLER: Right. That's the consideration of the
19 creditors, Your Honor.

20 THE COURT: I just don't think it's the right cross
21 reference.

22 MR. BUTLER: Maybe it's not the right cross
23 reference?

24 THE COURT: Yeah. That refers to the retained plans.

25 MR. BUTLER: I know that people were trying to clean

1 up the references here.

2 THE COURT: Yeah. It's on page 33.

3 MR. BUTLER: That's correct, Your Honor. We'll clean
4 it up.

5 THE COURT: Okay.

6 MR. BUTLER: It should be 3.2.3, I believe.

7 THE COURT: Okay.

8 MR. BUTLER: It's 3.2.3.

9 THE COURT: And I just want to make sure, again, that
10 the language in the summary on the pension plans is consistent
11 with the language on page 69, particularly in (e) on 69. I
12 think it is but again maybe I was thrown off by the word
13 addressed.

14 (Pause)

15 THE COURT: The closing of this agreement, the drop
16 dead date is September 30th, although there's a potential
17 extension. And it wasn't clear to me what happens with the
18 financing between the -- what I've approved today and that
19 date.

20 MR. BUTLER: Your Honor, the -- that is the outside
21 drop dead date under this agreement.

22 THE COURT: Right.

23 MR. BUTLER: The targeted closing date is July 31st.
24 and there's not much financing in the company to go beyond that
25 time.

1 THE COURT: Okay. Well, I think that's maybe worth
2 pointing out. That the parties to the agreement, all of them,
3 intend to close on that date because obviously the other
4 parties could have you all under a barrel if they stretch it
5 out. And then you -- I guess Mr. Tanenbaum answered my
6 question that the termination of July 15th was for the GM
7 Bankruptcy Court approval of GM's entry.

8 MR. BUTLER: Right.

9 THE COURT: And you already have a date for that. So
10 I don't think -- I guess you could put in the disclosure
11 statement that that hearing's been scheduled for that date.

12 MR. BUTLER: Okay. So Your Honor, subject to
13 addressing the comments you've just given us and addressing
14 with -- working with Mr. Rosenberg on adding different
15 procedures between now and -- supplemental procedures between
16 now and July 23rd, and the rulings you've made on 1127 and a
17 couple of the other matters, are there any other matters that
18 Your Honor believe need to be addressed or you prefer to rule
19 on the motion?

20 THE COURT: Before I hear from -- I'll hear from
21 Mr. Rosenberg on this, but there was a point -- I think you've
22 addressed this, about the committee being able to express its
23 view and you changed that around slightly.

24 MR. BUTLER: We don't have any problem with the
25 committee putting a letter in here and addressing their view.

1 THE COURT: Okay. Is there anything else?

2 MR. ROSENBERG: No. That resolved one of three issues
3 I wanted to raise, Your Honor.

4 THE COURT: Okay.

5 MR. ROSENBERG: And I think Mr. Bernstein wants to me
6 raise a fourth, I'm going to have to ask him what that is.
7 Before I get to that, I would request that Your Honor direct
8 that the disclosure statement include, in chart form, something
9 that shows that at zero recovery to the unsecured creditors,
10 Platinum has gotten out X and GM has gotten out Y at 100
11 million, at 180 million where the committee has capped out to
12 show the limitations here, notwithstanding the massive profits
13 that would be earned at that point. I think it's highly
14 relevant to --

15 THE COURT: No, I think -- it seems to me what should
16 be disclosed is what is necessary to get money to the
17 unsecured, not what the other guys are getting. You can object
18 to the deal on the basis that other guys are getting more.

19 MR. ROSENBERG: Okay.

20 THE COURT: But I just -- I think it's what you're
21 getting that really counts.

22 MR. ROSENBERG: Okay.

23 THE COURT: As opposed to what the other guy is
24 getting. I just -- I think it's -- you're going to get people,
25 no matter what, who just vote no because they're angry. But I

1 think rationally people should look at what they're getting and
2 the odds -- the likelihood -- what it will take to get to that.
3 And again, it's not clear to me whether the debtor's going to
4 be able to say some projection of what it will take to get
5 that. If not, then they'll have to say we don't know, we
6 cannot tell you whether you're going to get any.

7 MR. ROSENBERG: It's clear, Your Honor, what it would
8 take to get to that.

9 THE COURT: All right. Well that, I think -- you
10 don't need to say what Platinum is getting but I think you need
11 to say what --

12 MR. ROSENBERG: Okay.

13 THE COURT: I think you need to say what the debtor's
14 getting.

15 MR. ROSENBERG: Okay. And you don't think it's
16 relevant to suggest that when the committee gets capped or the
17 unsecured creditors get capped and get no more, that Platinum
18 is getting X and GM's getting Y?

19 THE COURT: Well that's implicit. It's a cap and the
20 other guys own the company so they're going to get more.

21 MR. ROSENBERG: Okay.

22 THE COURT: As far as the disclosure statement is
23 concerned, I guess your letter can say what your letter says.

24 MR. ROSENBERG: Our letter can say all that. Yes,
25 sir.

1 THE COURT: But I think it's the disclosure statement
2 that focuses really on what creditors are getting.

3 MR. ROSENBERG: Okay. My next point is that I would
4 like to ask Mr. Butler, on the record, whether he's going to
5 insist on filing an objection before we start discovery.

6 MR. BUTLER: That's been the procedure in these cases
7 all along. I'm not going to waive the process of these cases.

8 MR. ROSENBERG: Okay.

9 THE COURT: We're on a short timeline so I think it's
10 probably better to do that.

11 MR. ROSENBERG: To?

12 THE COURT: I mean, I think you know the basis for
13 your objection, you can modify it, I suppose. New things come
14 up.

15 MR. ROSENBERG: Okay. Mr. Bernstein will make his
16 own point, Your Honor. Thank you.

17 MR. BERNSTEIN: Your Honor, I just want to comment, I
18 understand where we have ended up at this hearing. But as we
19 go forward here we have a very short time, as you observe. And
20 unless the debtor embraces the outcome of this hearing, it's
21 going to be very difficult for us to move forward because they
22 are in control of the very information that we spent a lot of
23 the hearing talking about.

24 I understand the debtor is in a difficult position
25 and frankly we sympathize with them because they're under great

1 pressure and they would also have other parties to deal with.
2 But at least we now know what the ground rules are and we'd
3 appreciate really an accelerated process here so we can get to
4 a conclusion quickly. And the conclusion may be that there is
5 no other deal. The conclusion may be that there are other
6 deals. But one way or another, we want to accelerate that
7 process.

8 THE COURT: I don't need to direct the debtor to
9 embrace it. I think the debtor understands that they own the
10 land.

11 MR. BUTLER: Your Honor, I think the record's been
12 very clear here that we have companies at all times faithfully
13 carried out the orders of this court. And has worked, I think,
14 throughout this process with the DIP lenders, the DIP steering
15 committee on a cooperative basis and we'll continue to do so.

16 THE COURT: Okay. And again, I stand ready to deal
17 with you all on very short notice if you can't resolve it,
18 although I'm fairly comfortable you will resolve these issues.

19 Okay. Let me go back to the GM agreements. I'm
20 prepared to approve those based on the record of this hearing.
21 So that order will be entered. I think you need to make a few
22 modifications to the black line you gave me this morning on the
23 other order.

24 MR. BUTLER: On the modification order?

25 THE COURT: Yeah.

1 MR. BUTLER: Yes, we do. We have to sit with
2 Mr. Rosenberg and work those out.

3 THE COURT: Right.

4 MR. BUTLER: So, yes.

5 THE COURT: And I should have been there now but I'm
6 going to be up at the judicial conference, I'm going up there
7 shortly, so I'll be out of pocket for a while and I may not be
8 able to look at this, anyway, till tomorrow. But I'm prepared
9 to approve the disclosure statement supplement, assuming the
10 changes are made that I've directed. And you know the drill on
11 that, you can submit the black line to Court after you've made
12 them and I'll review them and tell you whether they're
13 compliant with what I said on the record and if they are then
14 I'll ask you to file it with the Court and then the order will
15 be entered.

16 And the solicitation issues, you have a couple minor
17 changes there to make but otherwise that looked fine to me.

18 MR. BUTLER: Thank you very much, Your Honor.

19 MR. TANENBAUM: Your Honor, I just have one comment.

20 THE COURT: I just want to make sure you're picked up
21 on the transcript, Mr. Tanenbaum.

22 MR. TANENBAUM: I understand you just approved the
23 LSA motion but till we see the order and understand how --

24 THE COURT: I understand. I think what I've directed
25 here is reasonable though, for GM. I don't think that --

1 MR. TANENBAUM: I might say one thing for the record,
2 and I wasn't going to get into. We have an agreement with
3 Platinum that we may need to work through to accommodate some
4 of the items that you've addressed. So there's no guarantee
5 that --

6 THE COURT: I understand. I understand. Okay.
7 Anything else? No? All right. Thank you.

8 ALL: Thank you, Your Honor.

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I N D E X

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C E R T I F I C A T I O N

I, Dena Page, court approved transcriber, certify that the
foregoing is a correct transcript from the official electronic
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matter.

Signature of Transcriber

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Date

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